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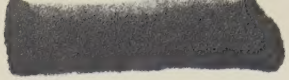

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THE CONSTITUTIONAL HISTORY AND CONSTITUTION OF THE CHURCH OF ENGLAND

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THE CONSTITUTIONAL HISTORY AND CONSTITUTION OF THE CHURCH OF ENGLAND

FELIX MAKOWER

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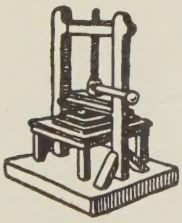

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NOTE.

For the various editions of books which have been used the reader should consult appendix XIV.—The *Lehrbuch des Kirchenrechts* by Aemilius Ludwig Richter is cited according to the eighth edition, Leipzig, 1886.

Anglo-Saxon laws are given according to Schmid, *Gesetze der Angelsachsen*, 2nd Ed. English laws down to the death of Anne (1714) are cited from *Statutes of the Realm* (Record Commission; see append. XIV, I, 2).

Rer. Brit. Scr. = Rerum Britannicarum Medii Aevi Scriptores. The number given is the number in the catalogue of the series, as printed in append. XIV, II, 1 *c*.

Unless the contrary is stated, the Roman figure denotes the volume, the Arabic the page. Such a reference as § 54, near note 57, is to be taken as a reference to the text of § 54, near the place where note 57 is marked.

The year-dates added in brackets to citations of acts down to 1714 are taken from *Statutes of the Realm*. Where a double date is given, the first is old style, the latter new, the time indicated being the *beginning* of the parliamentary session in which the act in question was passed. In all other cases year-dates have been corrected so as to make the year begin with January 1st instead of—as was the method of computation which prevailed until the end of 1751—with March 25th.

For the English translation the author, who is indebted to Dr. Felix Liebermann for many valuable suggestions, has made several alterations. Those of more material importance will be found in the following passages: § 1, note 21; § 4, note 5 near note 9; § 5, near note 8a; § 9 III; § 11, near note 30a; § 19, note 1; § 22, notes 5, 7, 13; § 14, note 13; § 27, note 13; § 33, note 25; § 43, note 2; § 44, note 16; § 48, near note 16a; § 54, note 7: § 55, note 25; § 60, note 11, near note 26; append. I, note a; append. XIV, II, 2.

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1. ENGLAND.

A. TO THE TIME OF THE NORMAN CONQUEST.

§ 1.

a. The introduction of Christianity.[a]

As early as the beginning of the third century Christianity was widely diffused in the Roman province of Britain, alike among the Romans and the native inhabitants. The constitution of the church was episcopal. Members of the British clergy took part in the councils of Arles (314), Nicaea (325) and Rimini (359): doctrinal controversies did not leave the church of Britain unconcerned. Owing to missionary efforts, emanating partly from Britain, partly from Rome, Christian churches arose in Ireland and at several points in what is now called Scotland.

At the time when the successive descents of Teutonic tribes began (450), the Roman province was essentially Christian. These heathen settlers, however, gradually conquered the southeastern part of the principal island,[1] and their settlements were combined to form seven small kingdoms, the boundaries of which were constantly changing: Kent (peopled by Jutes), Essex, Sussex, Wessex (east, south and west Saxons), East Anglia, Mercia, Northumbria (all three peopled by Angles). For a considerable time the hegemony fell now to one, now to another of these states, the king of the leading state being designated Bretwalda.[2] The earlier, British

[1] The dates which mark the gradual disruption of the country are brought together in Haddan and Stubbs, *Councils* I, 43. The conquest of the district south of the Thames falls between the years 450–516; that of the whole eastern coast, 516–77.

[2] Various forms of the name occur. By some it is interpreted as *Britenwalter*; by others, perhaps more correctly, as *Breitwalter*, from the adjective *bryten*. The dignity of Bretwalda represents historically a preliminary stage in the establishment of a common sovereignty for all Anglo-Saxon states. On the derivation of the name and the position of the Bretwalda cf. Freeman, *Hist. of Norman Conquest*, 3rd edition I, 548, appendix B.

[a] Perry, *Hist. of the Engl. Church* I cc 1–9.—Compare also appendix XIV, II, 3 *a*, *b*.

inhabitants were in part slain or driven out, in part merely reduced to subjection and compelled to discharge the lowest offices. In these districts but slight traces were left of the constitution of a Christian church, traces which were speedily obliterated.[3]

Even whilst the driving back of the Britons by the new settlers was still in progress, the conversion of the latter was undertaken from Rome. Pope Gregory I sent in quick succession two missions, the first in 597 under the conduct of Augustine, the second, intended to reinforce the first, in 601 under the direction of Laurentius [4] and Mellitus.

As the first point of attack Kent was chosen. The Kentish king Aethilberht held at this time the position of Bretwalda. The queen, a Frankish princess, had remained a Christian and was already exercising the rites of her faith in a church, which dated back to Roman times, near the chief town of Kent, Canterbury (=Kenterburg).

Christianity as taught by the Roman missionaries differed in various external uses from the Christianity of those parts of the country whose population still remained Keltic. The differences related principally to the mode of determining Easter, to the rites observed at baptism and to the shape of the tonsure.[5]

The emissaries of the pope succeeded, in a brief space of time, in extending the church over Kent and Essex. To the latter country Augustine had gained ready admission, inasmuch as Saeberht, a relation of Aethilberht, was ruler there. In Kent the church, in spite of the blows which fell upon it, maintained its ground; but in Essex it was suppressed as early as 617–618, that is, shortly after the death of Saeberht.

Meanwhile (from 616) Northumbria under king Eadwine had become the leading state. Eadwine was a suitor for the hand of

---

[3] As to the alleged archbishop of York, Samson, who is said to have lived at the end of the fifth century, see Haddan and Stubbs, *Counc.* I, 149 note.—Geoffrey of Monmouth, not a credible authority, relates, *Historia Britonum* (ed. Giles) lib. xi §§ 8 and 10, and after him Matth. Parisiensis, *Chron. major.*, that the Saxons summoned to their help against the British king Careticus [according to Matth. Parisiensis (*Rer. Brit. Scr.*), *Chr. Maj.* I, 250 he ascended the throne in 586] an African king named Gormund, who had invaded Ireland. Gormund defeated Careticus and ceded a large part of the conquered country to the Saxons. *Secesserunt itaque Britonum reliquiae in Occidentales regni partes, Cornubiam videlicet atque Gualias. . . . Tres igitur archipraesules, videlicet urbis Legionum, Theonus Londoniensis, et Thadioceus Eboracensis, cum omnes ecclesias sibi subditas, usque ad humum destructas vidissent: cum omnibus ordinatis, qui in tanto discrimine superfuerant, diffugiunt ad tutamina nemorum in Gualias. . . . Plures etiam Armoricanam Britanniam magno navigio petiverunt: ita ut tota ecclesia duarum provinciarum, Loëgriae videlicet et Northanhumbriae, a conventibus suis desolaretur: sed haec alias referam, cum librum de exulatione eorum transtulero.* No such account is found in the Anglo-Saxon chronicles, Beda *Hist. Eccles.*, Nennius *Hist. Britonum* or Gildas *De excid. Britanniae.* On Gormund see also W. Hardy in *Rer. Brit. Scr.* No. 39; I, 596.

[4] Laurentius had been commissioned by Augustine to convey to Rome his reports and enquiries. (See preface to Gregory's answers, printed in Haddan and Stubbs, *Counc.* III, 18.)

[5] For the details see Haddan and Stubbs, *Counc.* I, 152.

the Kentish king's sister. He received her to wife upon condition of allowing her the free exercise of her religion. Paulinus, a member of the second Roman mission, accompanied the princess in 625 to York, the chief town of Northumbria, and was successful[6] in inducing the king and the nobles (627) to accept Christianity; he it was who spread the Christian faith over Northumbria, and bore it also to certain places in Mercia.

In the year 633, Eadwine was defeated and slain in the battle of Haethfelth by the united kings of Mercia and the western Britons, the former a heathen, the latter a Keltic Christian. As a consequence, the Roman Christianity in Northumbria and Mercia became the object of persecution and its organization was destroyed. Paulinus fled to Kent, where he laboured until his death as bishop of Rochester. Upon Eadwine's overthrow the two provinces of Northumbria, Deira and Bernicia, fell to separate rulers. Both of these princes had previously been converted to Keltic Christianity, but renounced their faith upon their accession to power.[7] They continued the war with the Britons and were alike slain. Oswald now became king of Northumbria and in the year 635 defeated the Britons at Denisesburna[8] (= Dilston?). His conversion had taken place during his exile in the north. Thus the form of Christianity presented to him by his teachers was the Keltic; and it was this form that, after his victory, he introduced into Northumbria, being assisted by bishop Aidan, whom he had summoned from the monastery at Iona.[9]

As a result of the dominant influence of the then reigning kings of Northumbria, Christianity was presently again diffused over Mercia and Essex.[10] Here too the form which now prevailed was Keltic.

In East Anglia, at an earlier time (between 628 and 632), king Eorpwald, acting under the suasion of the Romish Christian, king Eadwine of Northumbria, had accepted Christianity. After a short break in the propagation of the church, the work was, with the consent of archbishop Honorius of Canterbury, resumed (between 631 and 636)[11] by Felix, a Burgundian bishop, and carried on with success. At a later date Christianity was further spread in the land, partly from Roman, partly from Keltic sources.

The conversion of Wessex was undertaken by the missionary Birinus, who arrived in Britain in the year 634. The mission was an independent one, proceeding from North Italy. Here as in East Anglia there was an intermission in the work (643–50), after which it was, in the latter year, taken up again by Agilbert, who was of Gallic origin but had studied long in Ireland.[12]

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[6] Compare, however, Haddan and Stubbs, *Counc.* I, 123 for an account of the baptism of Eadwine by an apparently *British* priest, Run, son of Urbgen.

[7] Beda, *Hist. Eccles.* Book III, c 1 § 150.

[8] Beda, *Hist. Eccles.* Book III, c 1 § 151.

[9] Beda, *Hist. Eccles.* Book III, c 3.

[10] Haddan and Stubbs, *Counc.* III, 93 ff.—In 654, after a break of thirty-seven years, a bishop of London was again consecrated—Bishop Cedd.

[11] Haddan and Stubbs, *Counc.* III, 88; on the date see III, 89, note *a*.

[12] Haddan and Stubbs, *Counc.* III, 90.

In Sussex it was not until about the year 680 that the conversion of the people—the king and queen had already embraced Christianity—began. It was effected by the agency of bishop Wilfrid, who had been driven from York.

Thus in the middle of the seventh century, even among the Teutonic inhabitants of Britain, the two forms of Christianity, the Roman and the Keltic, were represented in nearly equal proportions. The differences, which were in respect of minor points, were exaggerated by both parties to the complete rupture not only of community of faith, but of community of life.[13] The Irish bishop Dagan refused to eat under the same roof as the archbishop of Canterbury.[14] The Romish clergy, on their part, so soon as they felt strong enough, treated the Kelto-Christian clergy as not entitled to officiate, and did not recognize the validity of orders conferred by them.[15]

Repeated attempts had been made to induce the Kelts to surrender their special uses. Thus Augustine had held two solemn conferences with the British bishops (about 603);[16] whilst Laurentius, the second archbishop of Canterbury, had addressed letters to the clergy of the Irish and the Britons.[17] Both had failed in their efforts. It was only in South Ireland that the popes, before the middle of the seventh century, succeeded in obtaining the acceptance of the Roman uses.[18]

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[13] Reports in Haddan and Stubbs, *Counc.* I, 202. For later times cf. Beda (d. about 734) *Hist. Eccles.* Book II, c 20 § 147: . . . *quippe cum usque hodie moris sit Brittonum fidem religionemque Anglorum pro nihilo habere, neque in aliquo eis magis communicare quam paganis.*

[14] Letter of Laurentius, Mellitus and Justus to the Scottish (=Irish) bishops (604–610) printed in Haddan and Stubbs, *Counc.* III, 61: . . . *Daganus Episcopus ad nos veniens, non solum cibum nobiscum, sed nec in eodem hospitio quo vescebamur, sumere voluit.*

[15] Compare especially Theodore's Penitential (Haddan and Stubbs, *Counc.* III, 173 ff.), Book II, c 9 §§ 1–3. § 1 runs as follows: *Qui ordinati sunt a Scottorum vel Britonum Episcopis, qui in Pascha vel tonsura catholici non sunt, adunati aecclesiae non sunt, sed iterum a catholico Episcopo manus impositione confirmentur.* See likewise the words of Wilfrid (664) in Eddius, *Vita Wilfr.* (*Rer. Brit. Scr.* No. 71) I, 18.—After the conference of Streoneshalch, however, Wini, bishop of Wessex, which followed the Roman use, consecrated Ceadda to York with the assistance of two British bishops—*adsumptis in societatem ordinationis duobus de Brittonum gente episcopis.* Haddan and Stubbs, *Counc.* I, 124.

[16] Haddan and Stubbs, *Counc.* III, 38 ff.

[17] Printed in Haddan and Stubbs, *Counc.* III, 61.

[18] The efforts of pope Honorius I (625–38) and of the pope elect (640) John IV are reported in Beda, *Hist. Eccles.* Book II, c 19.—Beda, also in *Hist. Eccles.* Book III, c 3 § 155: . . . *Hoc etenim ordine septentrionalis Scottorum* (Scotti=the inhabitants of Ireland and of the islands on the west of Scotland) *provincia et omnis natio Pictorum illo adhuc tempore* (635) *pascha Dominicum celebrabat, aestimans se in hac observatione sancti ac laude digni patris Anatolii scripta secutam; quod an verum sit, peritus quisque facillime cognoscit. Porro gentes Scottorum, quae in australibus Hibernae insulae partibus morabantur, jamdudum ad monitionem apostolicae sedis antistitis, pascha canonico ritu observare didicerunt.* Beda, Book III, c 26 § 237: *Reverso autem patriam Colmano, suscepit pro illo pontificatum Nordanhymbrorum famulus Christi Tuda* (664), *qui erat apud Scottos austrinos eruditus atque ordinatus episcopus, habens juxta morem provinciae illius coronam tonsurae ecclesiasticae, et catholicam temporis paschalis regulam observans;* . . .

As then the domains of the two forms of Christianity were no longer coincident with the domains of the two races, the Kelts and the Teutons, but, on the contrary, both forms were represented even in the Teutonic kingdoms, the need of uniformity became imperative. Moreover, a settlement of the controversy was easier to effect in the Teutonic kingdoms, where differences of race played no part.

When Paulinus fled from Northumbria, there had remained behind one deacon, at least, who followed the Roman use. Intercourse with the southern kingdoms of the Anglo-Saxons, with Gaul and with Italy afterwards served to keep alive a Roman party in Northumbria. This party derived further support from the fact that king Oswiu (Oswio, Oswy), Oswald's successor, married a Kentish princess, and caused his son Alchfrid to be instructed by the priest Wilfrid, who had studied in Rome and Lyon, and adhered to the Roman party.

To put an end to the controversy, Oswiu in 664 summoned a conference to meet at the monastery of Streoneshalch (= Whitby). At this conference there appeared bishops Colman of Northumbria, Cedd of Essex and Agilbert (before and perhaps still bishop of Wessex),[19] as well as others of the clergy. The representatives of the two parties discussed in public the questions of the calculation of Easter and of the shape of the tonsure. The result of the discussion was, that king Oswiu decided in favour of the Roman use, which was now universally introduced into Northumbria and Essex.

Whatever remained of Keltic uses in the Teutonic kingdoms of Britain after the conference of Streoneshalch, was suppressed by archbishop Theodore of Canterbury (668–90). The national church council assembled by him in 673 at Herutford expressly confirmed the obligation to fix Easter according to the Roman mode of reckoning.[20]

In the Keltic districts of the British Isles, however, the old usages held their ground almost everywhere up to the eighth or the beginning of the ninth century.[21] It was, in some cases, considerably

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[19] It is doubtful whether Agilbert had yet become bishop of Paris. Haddan and Stubbs, *Counc.* III, 106, note.

[20] Counc. *Herutford* (Haddan and Stubbs, *Counc.* III, 118) c 1: *Ut sanctum diem Paschae in commune omnes servemus, Dominica post quartam decimam lunam mensis primi.*

[21] The Roman tonsure and calculation of Easter were accepted about 630 in South Ireland, in 704 in North Ireland (compare § 11, note 3) and probably in Cumbria (Haddan and Stubbs, *Counc.* II, 6; the date 688 is given by Skene, *Celtic Scotland*, 2nd ed. II, 219); in 705 the part of Cornwall subject to Wessex adopted the Roman Easter (Haddan and Stubbs *Counc.* I, 673). The acceptance, about 710, of the Roman Easter and tonsure among the Picts was due to a decree of Nectan MacDerili (Haddan and Stubbs III, 294); whilst the monastery of Iona adopted it in 716 (Beda, *Hist. Eccles.* Book III, c 4, Book V, cc 22, 24).— The dates are brought together in Haddan and Stubbs III, 223. The Welsh bishoprics one after the other (middle of the eighth to the beginning of the ninth century. Haddan and Stubbs I, 203) and the western parts of Cornwall (probably from the middle of the ninth century. Haddan and Stubbs I, 674, 676) were the last of the Keltic churches to adopt the Roman Easter. Compare Bruno Krusch, *Die Einführung des griechischen Paschalritus im Abendlande;* in *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* IX, 141 sq.

longer before the bishops of those districts surrendered their independent positions and allowed themselves to be incorporated in the papal organization of the church.[22]

As regards Wales[23] in particular, the princes of that country fell, from the beginning of the ninth century, into political dependence on the Anglo-Saxon kings. Soon afterwards began the gradual coalescence of the constitutions of the two churches. The bishoprics of South Wales came, from the end of the ninth century, into more or less close connexion with the Anglo-Saxon church.[24] But it was not until the beginning of the twelfth century that the Welsh bishops completed their submission to the archbishop of Canterbury,[25] and still another century passed before Welsh independence in state and church was wholly overthrown.

Meanwhile Christianity in England had again had to struggle for existence. With the beginning of the ninth century came a series of attacks from heathen Northmen, especially the Danes. They pillaged the country and destroyed, above all, many of the large monasteries. For long the Anglo-Saxons had to encounter reverses; at last in 878, under the leadership of Aelfred the Great, they routed the Danes, who were induced to settle peaceably under their own ruler in the north-eastern and some of the eastern provinces, their king Guthrum I and many of his people accepting the Christian faith. A century of comparative respite from external attack followed, during which the Anglo-Saxon kings were able again to reduce the Danish part of the country to subjection. However, towards the end of the tenth century, successive hosts of Northmen, among whom Christians[26]

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[22] In regard to Cornwall see Haddan and Stubbs, *Counc.* I, 673-695. From the middle of the ninth century the single British bishop of Cornwall recognized the supremacy of Canterbury. In the middle of the tenth century probably the first Saxon bishop of Cornwall was consecrated. In the first half of the eleventh century the British see was merged in the Saxon see of Crediton.

[23] For the documents referring to Wales see Haddan and Stubbs, *Counc.* I, 202-620.

[24] Haddan and Stubbs, *Counc.* I, 204, note.

[25] Haddan and Stubbs, *Counc.* I, 308, note. Urban of Llandaff (1107) and Bernard of St. David's (1115) were the first bishops who subordinated themselves in every respect to the archbishop of Canterbury. Afterwards the same Bernard claimed metropolitan authority for the see of St. David's. New struggles ensued before Bangor and St. Asaph submitted to the archbishop of Canterbury, St. Asaph being the last to yield. On the fruitless endeavours of Giraldus de Barri, towards the end of the twelfth century, to raise once more the question of the independence of the see of St. David's see Introduction to Vol. I of the works of Giraldus (*Rer. Brit. Scr.* No. 21); on the efforts, equally fruitless, of bishop Beck of St. David's in 1284 see Introduction, pp. xxvii ff. to Vol. III *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77). For the attempt of the rebel earl Glendower in the years 1404 ff. to restore the ecclesiastical independence of the Welsh bishops compare Haddan and Stubbs I, 668 ff., Pauli, *Gesch. von England*, V, 33.

[26] In Denmark king Harald II, about the middle of the tenth century, was forced into acceptance of Christianity by the emperor Otto I. His son Swen, who was likewise baptized, became an apostate and displaced his father. Harald died in 986. Swen (Swegen) headed most of the subsequent descents upon England and in 1013 expelled king Aethelred. He died in 1014; his sons Harald and Knut adopted the Christian faith. The former became king of

were now numbered, renewed the pressure. The bitter contest was ended by a fresh division of sovereignty: for a short time the Anglo-Saxon king, Eadmund Ironside (1016–17), and the leader of the Northmen, Knut the Great, ruled the two states of the divided realm, the latter monarch having previously embraced Christianity. Eadmund died very soon after the division, and Knut now became king of all England (1017).[27] Knut favoured the church. From his reign Christianity in England was threatened no further by attacks of the heathen.

§ 2.

b. Relation of state and church to one another.[a]

During the early days of progressive conversion the church was entirely independent of the state. It entered the state as a sort of society, containing in itself all that was requisite for its own development and directed by its own heads. Nowhere had it any points of contact with the civil constitution; neither did the state influence the church, nor the church the state.

But this was very soon changed. Conversion, as a rule, followed certain lines: first the king was won over, and his example was used to work upon the nobility; not until this had been done was the effort made to convert the common folk. Thus the church rested upon the ruling powers. Among the lower people, for long it did not possess the necessary support: it was accordingly compelled to have regard to the wishes of the secular rulers of the state.

The clergy of those days were better educated than those about them; as a result, it was the bishops who everywhere took their places as chief counsellors to the kings. That civil and ecclesiastical influences in the several states should work in the same direction was a natural consequence of this close connexion between the leaders of the two interests.

Nor was there any opposition between the several kings and the central governors of the church at Rome. The communications which passed consisted mainly of admonitions from the pope to the kings, which the kings obeyed, and of petitions from the kings to the pope, which the pope did not reject.

This relation towards the pope continued unchanged when, in the beginning of the ninth century, the Anglo-Saxon kingdoms had been combined into a single state. Outwardly the pope meddled but little with the affairs of the English church;[1] the sole important

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Denmark, the latter leader of the Danish forces in England.—In Sweden Christianity gained the ascendency under Olaf Schoosskönig (*circ.* 1000), in Norway about the same time under Olaf I Trygväson.

[27] In 1018, upon the death of his brother Harald, Knut became king of Denmark.

[1] For instances of the exercise of papal influence in the ninth and tenth centuries see Stubbs, *Const. Hist.* I, 267 c 8 § 90.

[a] Gneist, *Engl. Verfassungsgeschichte* § 5 III.—Stubbs, *Constitutional History* c 8 § 88.

points in this regard are the conferring of the pallium on the two archbishops and the taxation of England by the imposition of Peter pence.[2] Far more considerable was the influence which the pope exercised, not in definite legal forms, but in an informal way, either by personal or epistolary intercourse with Englishmen in high place, or through the mere force of that example, which the Italian and Frankish countries, more closely connected with the papal government, exerted upon less civilized England.

Within the land, church and state remained in intimate union. It is true, occasions already arose when the archbishop of Canterbury[3] openly opposed the king. Such dissensions, however, were of a personal and transient character; there were no real and lasting controversies as to the relation of state to church. As a rule, the king with the assistance of the archbishop of Canterbury directed alike the secular and the ecclesiastical administration. At the national councils, wherein important measures and laws were discussed and adopted, both bishops and temporal magnates were present. The laws enacted dealt with spiritual as well as with secular things. In the legislation of Eadmund (940–46) and often afterwards, the resolutions arrived at are, it is true, divided in outward form into laws spiritual and laws temporal; but both groups rest on the consent of the same persons, nor is the division strictly carried out in regard to the substance of the several enactments. In these laws we find, as touching ecclesiastical affairs, regulations which deal with the keeping of the church's peace (*ciric-grið*), with the right of asylum, the chastity of the clergy, dues payable to the church, the duty of repairing church buildings, the observance of holidays and fasts, penal proceedings against the clergy and like matters. At other assemblies, held for the most part under the presidency of the archbishops, the chief subjects of discussion were the internal affairs of the church. King and secular magnates frequently took part in such ecclesiastical councils.

In like manner in lower spheres ecclesiastical and secular officials worked in concert. This was especially the case in the field of jurisdiction. The royal officer and the bishop sat together in the folk-moot of the shire. A similar relation seems to have prevailed in the hundred-moots.[4] Moreover, it was everywhere the clergy who conducted the ordeal before the folk-moot.[5] In cases where church interests were injured, part of the money penalties imposed

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[2] Compare also the mention of the pope in *Aethelred* VIII (1014) c 26: *Gif maesse-preôst man-slaga wurðe, oððe elles mân-weorc tô swîðe gewurce, þonne þolige he ægðres, ge hâdes ge eardes and wraecnige swâ wîde swâ papa him scrîfe, and dæd-bête georne* ('*If a mass-priest becometh a manslayer or otherwise doeth too grave a misdeed, then let him lose all, class and country, and go into exile so far as the pope prescribeth for him, and let him willingly atone for the deed*'). So *Knut* II c 41 (compare here *leg. Hen. I* [Schmid, appendix XXI] c 73 § 6). For the history of Peter pence see Paul Fabre, *Recherches sur le denier de Saint Pierre en Angleterre au moyen âge* in *Mélanges d'archéologie et d'histoire* published by *l'école française de Rome*, supplement to Vol. XII. 1892 pp. 159 ff.

[3] So especially Dunstan (959–86). [4] Cf. § 59, notes 3 and 4. [5] Cf. § 59, note 9.

in the folk-moot flowed into the coffers of the church. On the other hand, in inflicting ecclesiastical penances the clergy endeavoured to secure the payment by evil-doers of the compensation which the secular law prescribed.[6] It is laid down to be the duty alike of the bishop and of the king and his officer, when clerk or stranger is injured, to fill the place of kinsmen and to call the offender to account.[7] Again, the independence of the bishops was utilized on behalf of the state by entrusting to them the collection of fines incurred by secular officers for misdemeanour in their offices.[8] This connexion of the prelates with lay officials had a natural result: the former kept constant watch on the conduct of the latter and served as a counterpoise to their influence.

The principal representatives of the independence of the church at this period came to be the monasteries. But their striving for independence was directed even against the bishops. Probably there were instances, though rare ones, as early as Anglo-Saxon times, in which larger monasteries were freed wholly from episcopal interference.[9]

How bishops and abbots were appointed in the last centuries of the Anglo-Saxon era, is a difficult matter to ascertain.[10] Two rights were in conflict with each other: the right, traced back to heathen days, of free election by the clergy, and the right, at least to co-operate, of those who had endowed the several bishoprics and abbeys. Particularly in the monasteries, the right of free choice of an abbot (subject to episcopal confirmation) seems to have been in great measure maintained.[11] In numerous cases, however, we find

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[6] Cf. § 59, note 19.

[7] *Edward and Guthrum* c 12, *buton he elles ôðerne* (kinsmen) *haebbe. Be leôd-geþineðum and lage* (Of people's ranks and law), Schmid, appendix V c 8. *Instituta Cnuti* (Schmid, appendix XX; a law-book, probably dating from shortly after 1110) III c 63.—The right of representing kinsmen in such a case is ascribed to the king—but not in such a way as to exclude the possibility of the bishop's right side by side with the king's—in Aethelred VIII c 33, Knut II c 40, leg. Henrici I (a law-book, probably dating from 1110–18. Schmid, appendix XXI) c 10 § 3, c 75 § 7.

[8] *Aethelstan* (924 [925]–940) II c 26 § 1: *And se biscop âmanige þâ oferhŷrnesse aet þâm gerêfan, þe hit on his folgoðe sŷ* ('*And let the bishop collect the penalty for disobedience* [*i.e.* for the non-execution of a law promulgated at the same time] *from the gerefa, who is in his diocese*'). *Eadgar* (959–75) III c 3: *And se dêma þe ôdrum wôh dême, gesylle þam cynge hund-twelftig scill. tô bôte, . . . and âmanige þære scire biscop þâ bôte tô þaes cynges handa* ("*Let him who judgeth unjustly pay the king* 120 *shillings as a penalty, . . . and let the bishop of the shire gather it into the king's hands*").

[9] Further details in Stubbs, Introduction to *Epistolae Cantuarienses* (*Rer. Brit. Scr.* No. 38 Vol. II) pp xxvii ff.

[10] Cf. Gneist, *Vfgsgesch.* § 2, note 5; also Stubbs, *Const. Hist.* I, 149 c 6 § 57.

[11] *Poenitentiale Theodori* (probably dating from the end of the seventh century. Haddan and Stubbs, *Counc.* III, 173 ff.) lib. II c 6 § 3; Privilege granted by king Wihtred of Kent at a Witenagemot at Baccanceld, relating to the election of an abbot in eight monasteries of Kent (date—between 696 and 716; printed in Haddan and Stubbs III, 238; genuineness not beyond dispute); *Dialogus Egberti* (regarded as genuine; between 732 and 766; printed in Haddan and Stubbs III, 403) c 11; Synods of *Pincahala* and *Celchyth*, 787 (Haddan and Stubbs III, 447) c 5; Council of *Celchyth*, 816 (Haddan and Stubbs III, 579) c 4.

appointments to abbacies made by other persons, above all by the king. When in the course of the tenth and eleventh centuries, in perhaps a third of all the bishoprics, secular canons were ousted and monastic chapters substituted for them,[12] the rights which existed in regard to the election of abbots of monasteries exerted in not a few dioceses a direct influence upon the mode of appointing bishops. Nor had the principle of appointment to bishoprics by free election ever been wholly lost.[13] Yet perhaps in a preponderating number of cases their nomination was by the king, often in the national council.

The pretensions of the church to immunity from secular burdens and to independence as against secular magistrates, were still confined in all directions within moderate limits. In the department of legislation the co-operation of the laity was not only tolerated, but actually sought. In the judicial sphere there were as yet only the germs of an attempt to withdraw from laymen all jurisdiction over the clergy;[14] sole and exclusive competence to determine even matters connected with church administration was not claimed by the church; although, in practice, there were many such matters in which the state did not intervene.[15] The clergy were not exempt from military service; they did not, indeed, as a rule take part in war personally, but they furnished men from their holdings. In isolated donations of land to churches and monasteries, or on other special occasions, varying degrees of freedom from services to the state were granted; but in almost all cases there remained at least the *trinoda necessitas*, as it was called, the obligations of military service, the repair of bridges and the maintenance of fortifications.[16] When the Anglo-Saxon kings, to keep the Northmen away, saw themselves compelled to pay them tribute—the well-known Danegeld—they raised the necessary sums by the imposition of a land-tax. But church lands did not contribute thereto, and they continued to have this immunity whenever afterwards, in Anglo-Saxon times, this tax was levied for other purposes.[17]

§ 3.

c. Development of the church constitution internally.[a]

I. Archbishops. After some initial uncertainty the Anglo-Saxon church, from the beginning of the ninth century onward, was permanently divided into two archiepiscopal provinces, over

[12] Compare § 37, note 6.

[13] Letters of Alcuin upon occasion of a vacancy in the archbishopric of York, 796 (printed, Haddan and Stubbs, *Counc.* III, 499, 500). Compare also the examples adduced in Stubbs, *Const. Hist.* I, 149 f. c 6 § 57.

[14] Compare § 59, notes 13, 14. [15] Compare § 59, *sub finem*.

[16] According to *Aethelstan* (924 [925]–940) I pr., tithes payable to the church are to be collected even from the bishops' own property.

[17] For the taxing of church lands under William II see § 4, note 21.

[a] Gneist, *Engl. Verfassungsgeschichte* § 5 I, II.—Stubbs, *Const. Hist.* c 8.

which the archbishops of Canterbury and York presided.[1] But the development of the northern province was not vigorous; there were always but few bishops there and, in consequence of this, provincial church councils were of rare occurrence.

II. Bishops. In the first decades of the conversion each of the petty kingdoms, with the exception of Kent, received only one bishop. Subsequently (from 673) archbishop Theodore succeeded in increasing the number of bishoprics by dividing them.[2] The bishops, who had originally been themselves active in travelling and spreading the faith by preaching and baptism, confined themselves more and more, as the number of the clergy increased, to the work of superintendence. But even at a later time they had to journey over their dioceses once a year, and were enjoined to hold, apparently also once a year, a diocesan synod.[3] In the business of superintendence the bishop was from the beginning of the ninth century aided, afterwards to a gradually increasing extent represented, by his one archdeacon.[4] Whether as early as these Anglo-Saxon days rural deans were instituted as resident overseers in small districts of the bishopric, is a doubtful matter.[5] The companions of the bishop, who remained behind at the episcopal seat, formed themselves into a corporation. Such a corporation was, in the oldest period, frequently monastic or at least composed of monks and secular priests. In the second half of the eighth century a sharper division was drawn between these two classes.[6] At the same time a decline of monasticism began. In the following century the corporations at the episcopal seats were transformed, everywhere or almost everywhere, into chapters of secular clergy. When then in the tenth century monasticism was rejuvenated, a struggle broke

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[1] Compare § 33. [2] Compare § 33. [3] Compare § 57, notes 1 and 3.
[4] Compare § 42. [5] Compare § 43, note 2.
[6] Council of *Clovesho*, 747 (Haddan and Stubbs, *Counc.* III, 362 ff.): c 4 . . . *Ut episcopi in suis parochiis abbates atque abbatissas moneant, quatenus seipsos primo ponant exemplum bene vivendi, deinde subjectos sibi ut regulariter conversantur, diligenti cura exerceant . . . ;* c 5 . . . *Ut episcopi monasteria, si tamen ea fas est ita nominare, quae utique quamvis temporibus istis propter vim tyrannicae quandam avaritiae, ad religionis Christianae statum nullatenus immutari possint, id est, quae a saecularibus, non Divinae scilicet legis ordinatione, sed humanae adinventionis praesumptione, utcunque tenentur; tamen pro salute animarum in eisdem commorantium, adire debeant, sit necesse: et ut inter caetera exhortamenta praevideant, ne sine sacerdotis ministerio aliquod illorum deinceps debilitatum periclitetur, juvantibus ad hoc eorum possessoribus;* c 19 . . . *Ut monachi seu nunnones . . . quietam ac regularem vitam agant, . . . ;* c 28 . . . *et ut inter alias regularis vitae observantias, vestibus consuetis juxta formam videlicet priorum, sive clerici, sive monachi deinceps utantur . . . ;* c 29 . . . *quod post hanc synodum non liceat clericos, vel monachos vel sanctimoniales, ulterius apud laicos habitare in domibus saecularium, sed repetant monasteria ubi primitus habitum sanctae professionis sumpserant; . . .* Legatine synods of *Pincahala* and *Celchyth* 787 (Haddan and Stubbs, *Counc.* III, 447 ff.) c 4: . . . *Ut Episcopi diligenti cura provideant, quo omnes canonici sui canonice vivant, et monachi seu monachae regulariter conversentur, tam in cibis quam in vestibus, ut discretio sit inter canonicum et monachum vel secularem; . . .*

out between the monks and the regular clergy, the former seeking to oust the secular element from the chapters of the bishops. The monks became possessed of a number of cathedral churches; in some places, however, they had to surrender again the position they had won. These contentions were prolonged into Norman times.[7] At the head of the secular chapters was a dean; this dates, at the latest, from towards the end of the Anglo-Saxon period.[8]

III. Parish priests. It was only by degrees that the episcopal dioceses resolved themselves into smaller districts, in which single clergymen remained to fulfil their office. Gradually the boundaries between these districts were determined. About the end of the eighth century we find the whole of the Anglo-Saxon kingdoms already divided up into parishes.[9] In each parish an independent body of church property was formed, in the first instance by donations from the lord of the soil and by irregular gifts upon occasion of divine service, afterwards by tithes and a whole series of other taxes,[10] voluntary at the outset, but soon transmuted by ecclesiastical or civil ordinances into enforceable services.

B. FROM THE NORMAN CONQUEST TO THE REFORMATION.

§ 4.

a. Relation of state and church to one another.[a]

The conquest of England by the Normans brought with it a tightening of the central state control. This strengthening of the civil power came at a time when the papacy, represented by Gregory VII (pope from 1073), began to express with greater boldness than before the ultimate conclusions to which its principles led, and to demand not merely the exemption of the church from secular interference, but even the subjection of all the various civil forces to the power of the papal see. The existence of these two opposite and progressive tendencies rendered a peaceful co-operation, based on mutual regard, such as had hitherto in general prevailed between church and state, for the future impossible. In its stead came first a sharper accentuation of the opposing principles and a more precise definition of the rights and duties of each power toward the other, then a struggle between the two for mastery in the state.

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[7] Compare § 37.
[8] Compare § 37, note 6.
[9] Compare § 44, notes 3–5.
[10] Church-scot, candle-scot, soul-scot, plough-alms.

Gneist, *Eng. Verfassungsgeschichte* § 14.—Stubbs, *Const. Hist.* c 9 § 101 (William I), c 10 § 106 (William II), § 112 (Henry I), c 12 §§ 139, 140 (Henry II), § 153 (John), c 19 and elsewhere. For the time of Henry III: H. R. Luard, *On the relation between England and Rome during the earlier portion of the reign of Henry III*, Cambridge 1877 (deals with the years 1216–35).—Weber, Heinrich, *Uber das Verhältnis Englands zu Rom während der Zeit der Legation des Kardinals Otho in den Jahren* 1237–41, Berlin 1883. Cf. also appendix XIV, II, 3 *a*.

During the first stage of that struggle, from William I to the death of Henry III (1066–1272) we see a steady retreat of the civil power before the superior might of the church, a retreat simply retarded by the best kings, not permanently checked. In the ensuing period, from Edward I to the end of the reign of Richard II (1272–1399), the state turns to the resolute assertion of its rights, and endeavours by strict regulations to restrain the church within limits consistent with the welfare of the body politic. The proceedings of Edward III (1327–77) were partly determined by the circumstance that the popes then living at Avignon (1309–76) were under French influence and necessarily regarded by him, in his wars with France, as foreign foes of England. From Henry IV to the Reformation (1399–1529) follows a third stage, a time of comparative peace. Both parties maintained their irreconcilable views. But the attention of the kings was fully occupied by the continuance of the great struggle with France and by the civil wars of red and white rose; the clergy, on their side, needed the protection of the civil power against the newly arisen party of reform.[1] Thus, in this period again, small skirmishes between church and state occurred; but neither of the two parties staked its whole forces on the issue, and both preferred, as each difficulty sprang up, to bridge the gulf between their principles by conventional dispensations and compromises.

The constitution of the English state under the first Norman kings was that of an absolute monarchy, the will of the sovereign being, however, influenced by frequent discussion with his nobles.[2] It was only by degrees that, following isolated precedents, decisive resolutions of the magnates of the land, and consultations with representatives of the knights of the shire and the towns became customary, the former from the time of Henry III, the latter from that of Edward I. In spite of the fact that the influence of the parliament thus originated, gradually increased, the power of the kings remained for long so preponderating, that their personal character almost determined the whole administration of the government. Accordingly, the relation of state to church varied with each succeeding reign, especially during the acute period of the struggle.

William I based his claim to the crown of England mainly on an alleged hereditary right of succession.[3] But he at the same time in invading England appealed to the sanction of pope Alexander II, who had sent him the banner of the church.[4] When, however,

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[1] The first attacks of Wycliffe upon the doctrines of the church were *circ.* 1363. Shirley, Introduction pp. xv ff. to *Fasciculi Zizaniorum* (*Rer. Brit. Scr.* No. 5).

[2] Compare § 21, note 6.

[3] Stubbs, *Const. Hist.* I, 280, note 1 c 9 § 95.—Cf. however the view of the jurists in the thirteenth century, Bracton (*Rer. Brit. Scr.* No. 70) VI, 74: *Non enim tenetur* (the king) *warrantizare donationem et feoffamenta regum qui regnaverant ante conquestum, ipse enim rex non est eorum haeres . . .*

[4] The pope approved the attack on England, partly because archbishop Stigand of Canterbury had obtained the pallium from an antipope.

upon the completion of the conquest, pope Gregory VII demanded to be recognized by the king as suzerain (1077–1079), he was met with a refusal.[5] Nevertheless, the mere fact that William had partly relied on the papal approval of his undertaking, compelled him from the outset to exhibit a certain consideration to the claims of Rome. This explains the circumstance—though other reasons may also have prevailed[6]—that in an ordinance issued probably about 1070 he went far towards gratifying the wishes of the church. By this ordinance he withdrew from the secular courts all jurisdiction in cases 'which pertain to the guidance of souls,' referred such cases to the exclusive adjudication of the ecclesiastical authorities (at whose disposal he placed the coercive powers of the state), and in so far admitted the validity of ecclesiastical law.[7] Thus, for the first time expressly, the state recognized, though in a limited sphere, an independent, ecclesiastical power; this recognition formed a firm basis for the church in all future contentions with the state. But William, on the other hand, also laid a foundation for the permanent incorporation of the higher clergy into the body politic of England as peers of the other magnates. This was effected by extending to the higher clergy that feudal relation which, even as regards secular magnates, was first perfected under William I.[8] This innovation was essentially effected by the condition imposed by William, probably about 1072, that the several bishoprics and greater abbeys should furnish a definite number of knights; various administrative measures in the same spirit gradually put the lands of the higher

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[5] Letter of William I to pope Gregory (printed in Migne, *Patrologiae Cursus Completus* Vol. 148 p. 748, among the letters to pope Gregory, No. 11): *Hubertus legatus tuus, religiose Pater, ad me veniens ex tua parte, me admonuit quatenus tibi et successoribus tuis fidelitatem facerem et de pecunia, quam antecessores mei ad Romanam Ecclesiam mittere solebant, melius cogitarem: unum admisi, alterum non admisi. Fidelitatem facere nolui, quia nec ego promisi, nec antecessores meos antecessoribus tuis id fecisse comperio. Pecunia tribus fere annis, in Galliis me agente, negligenter collecta est; nunc vero divina misericordia me in regnum meum reverso, quod collectum est per praefatum legatum mittitur; et quod reliquum est, per legatos Lanfranci archiepiscopi fidelis nostri, cum opportunum fuerit, transmittetur. . . .* The date of the letter as given in the text is inferred from letters No. 5027, 5074, 5135 in Jaffé. Dünzelmann in *Forschungen zur deutschen Geschichte*, XV, 533 would lead us to adopt 1078–9. According to Freeman, *History of Conquest* IV, 433, note 1, it was not before 1076; according to Stubbs, *Const. Hist.* I, 309, note 1, c 9 § 101, about 1076.

[6] Alleged reasons are:—(i) that the intention was to weaken the Anglo-Saxon folk-moot in favour of the Norman bishops; (ii) Spelman's conjecture (cf. app. I, note *a*) that the ordinance dates from 1085 being adopted, it is contended that the ordinance was the price paid the church for renouncing opposition to the then projected, afterwards (at the Council of Salisbury in 1086) executed plan, that all capable of bearing arms, including the sub-tenants of the clergy and laity, should take solemn oath of fealty to the king.

[7] The ordinance is printed in appendix I, where note *a* discusses the date. For further particulars as to its scope see § 60, note 3.

[8] For a similar relation between thegns and king in Anglo-Saxon times see Gneist, *Verfassungsgesch.* § 1, note 1.

clergy on the same footing in other respects as those of the secular vassals.[9] The view took form that the possessions of all the sees (Rochester excepted), of the larger abbeys and some parishes were *baronies*, that is fiefs held immediately under the king as feudal lord.[10] Important was it that this view was also adopted by the church, and that here again the two contending powers had a common basis.[11] In course of time manifold inferences, which, however, could not always be followed out to their full extent, were drawn from the feudal character of the possessions of the higher clergy. Many of these alleged 'inferences' are due to the fact that previously existing rights and duties were brought within the purview of the feudal principle and interpreted by its light.

The means by which William sought to keep the church in check are collected by Eadmer, a contemporary writer, as follows :—"Some of the things which he ordered to be newly observed throughout England I will set forth. . . . He would not endure that anyone in all his realm should, save at his bidding, admit the chosen pontiff of the Roman city as pope, nor that any should at all receive letter from the pope unless it had first been shown to him. Nor did he suffer that the primate of his realm, to wit, the archbishop of Canterbury . . . presiding over a general council of the bishops, should enact or forbid ought, save such things as were according to his royal will and had been first ordained of him. Nor yet did he grant that it should be permitted to any of his bishops to appeal, excommunicate or visit with other ecclesiastic pains any of his barons or servants, accused by public clamour of incest, of adultery, or of some capital offence."[12] It is hard to say now whether these principles were really so new as Eadmer assumes. At all events, we have to do here not with general orders issued by William, but

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[9] Compare § 27, note 13.

[10] Compare § 21, note 4.

[11] Only in Anselm's struggle with Henry I was the king's position as suzerain of the prelates for a time challenged. In chapter 11 of the constitutions of Clarendon, which was *not* rejected by the pope, the statement is quite clear: *Archiepiscopi, episcopi, et universae personae regni, qui de rege tenent in capite, et habent possessiones suas de domino rege sicut baroniam, et inde respondent justitiis et ministris regis, et sequuntur et faciunt omnes rectitudines regias et consuetudines.*

[12] Eadmer (born probably about 1060, died about 1124, or according to Rule 1144), *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 9: *Cuncta ergo divina simul et humana ejus nutum expectabant. Quae cuncta ut paucis animadvertantur, quaedam de iis quae nova per Angliam servari constituit ponam. . . . Non ergo pati volebat quemquam in omni dominatione sua constitutum Romanae urbis pontificem pro apostolico nisi se jubente recipere, aut ejus litteras si primitus sibi ostensae non fuissent ullo pacto suscipere. Primatem quoque regni sui, archiepiscopum dico Cantuariensem . . . si coacto generali episcoporum concilio praesideret, non sinebat quicquam statuere aut prohibere, nisi quae suae voluntati accommoda et a se primo essent ordinata. Nulli nihilominus episcoporum suorum concessum iri permittebat, ut aliquem de baronibus suis seu ministris, sive incestu, sive adulterio, sive aliquo capitali crimine denotatum publice nisi ejus praecepto implacitaret aut excommunicaret, aut ulla ecclesiastici rigoris poena constringeret.*

with isolated instances from which Eadmer has, on his own responsibility, inferred a general rule.[13]

William II felt the danger of an independent organization of the clergy under their own heads, the archbishop of Canterbury as primate of England[14] and the council of the national church. Accordingly he attempted to prevent these heads as long as possible from attaining to well-ordered efficiency. The death of Lanfranc in 1089 left his archbishopric vacant; the king refused to fill it, declaring that he would be his own archbishop.[15] For several years he withstood the pressure of the nobility and the clergy. However, during a severe illness, which was skilfully utilized by the church party, he yielded so far as to appoint a new archbishop (1093). Even then he still declined to give permission for the holding of a council of the national church.[16] Under his rule the rights which the crown had hitherto enjoyed, were maintained.[17] Financial claims

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[13] Stubbs, *Const. Hist.* I, 309 c 9 § 101, inclines to the view that an agreement of effect as quoted was entered into between the king and the English church. There is however no statement of the chroniclers that such was the case, and Eadmer's language points to a one-sided exercise of power, not to any sort of contract.

[14] The subordination of the archbishop of York to the archbishop of Canterbury had been recognized during the reign of William I. It had, it is true, been effected in concert with the king, and at a later date Henry I sought to maintain, in opposition to the pope, the agreement which had been reached. Cf. § 34. Though the kings may have had their reasons for regarding the subordination as advantageous to the state; yet, on the other hand, the government of the church party was thus unified and strengthened.

[15] Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 30, year 1093: . . . *nec ipse* (Anselm) *hoc tempore, nec alius quis archiepiscopus erit, me excepto.*

[16] Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 48, year 1094. Archb. Anselm says to Will. II: *Iube, si placet, concilia ex antiquo usu renovari. . . . Generale nempe concilium episcoporum ex quo rex factus fuisti non fuit in Anglia celebratum, nec retroactis pluribus annis.* The king replies:—*cum mihi visum fuerit de his agam, non ad tuam sed ad meam voluntatem.*—See also letter of Anselm in note 17.—As to the council at Rochingeham, 1095, cf. § 54, note 16.

[17] Chronicle of abbot Hugo of Flavigny (the chronicle was written by degrees *circ.* 1085–1102; the author was in England in 1095 or 1096 as an attendant of the papal legate; printed in *Monumenta Germaniae; Scriptores* VIII p. 474), year 1096: *Tunc temporis pro componenda inter fratres Willelmi regis filios concordia, Willelmum videlicet regem Anglorum et Robertum comitem Normannorum, abbas Divionensis ex praecepto papae mare transierat, et ut praescriptum regem ammoneret de multis quae illicite fiebant ab eo, de episcopatibus videlicet et abbatiis quas sibi retinebat, nec eis pastores providebat, et reditus proventusque omnium sibi assumebat, de symonia, de fornicatione clericorum; et quia conventionem fecerat cum eo Albanensis episcopus, quem primum illo miserat papa* (cardinal the bishop of Albano, legate in England in 1095), *ne legatus Romanus ad Angliam mitteretur nisi quem rex praeciperet, et quia adeo auctoritas Romana apud Anglos avaritia et cupiditate legatorum viluerat, ut eodem Albanense praesente et consentiente nec contradicente, immo praecipiente, Cantuariensis archiepiscopus fidelitatem beato Petro et papae iuraverat salva fidelitate domini sui regis. Quae res intantum adoleverat, ut nullus ex parte papae veniens honore debito exciperetur, nullus esset in Anglia archiepiscopus, episcopus, abbas, nedum monachus aut clericus, qui litteras apostolicas suscipere auderet, nedum obedire, nisi rex iuberet.*

Letter of Anselm (end of 1099 or beginning of 1100) to Paschal II (Migne,

were also more strictly enforced against the clergy. This was partly done by drawing new inferences from the analogy of lay fiefs. An ecclesiastical crown fief, vacated by the death of the occupant, was regarded as a knight's fee, which in default of an heir reverted to the crown.[18] The king, accordingly, first attached the usufruct in the interval between two occupations.[19] Not content with that, but applying the analogy of reversion completely, he reduced the substance: for during a vacancy he sold or let out church lands on farm for a long term, a large fine being paid down at once, which passed into his own coffers.[20] When in any particular case the levying of a land tax was requisite, in breach of the usage in connexion with the earlier Danegeld he extended the liability to the possessions of the church.[21]

Henry I had, at his accession, to give a formal assurance that he would abstain from selling church land or letting it out on farm.[22] A vacant ecclesiastical crown fief was now treated not as

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Patrologiae Cursus, vol. 159 p. 74; among Anselm's Letters, Book III, No. 40): . . . *Exigebat enim a me rex ut voluntatibus suis, quae contra legem et voluntatem Dei erant, sub nomine rectitudinis assensum praeberem. Nam sine sua jussione apostolicum nolebat recipi, aut appellari in Anglia; nec ut epistolam ei mitterem, aut ab eo missam reciperem, vel decretis ejus obedirem. Concilium non permisit celebrari in regno suo ex quo rex factus jam per tredecim annos. Terras Ecclesiae hominibus suis dabat; . . . Haec et multa alia . . . videns, petii licentiam ab eo sedem adeundi apostolicam, ut inde consilium de anima mea et de officio mihi injuncto acciperem. Respondit rex me in se peccasse pro sola postulatione hujus licentiae, et proposuit mihi ut aut de hac re, sicut de culpa, satisfacerem, et securum illum redderem, ne amplius peterem hanc licentiam, nec aliquando apostolicum appellarem, aut de terra ejus cito exirem. . . .*

[18] Anglo-Saxon Chronicle, under year 1100. (*Rer. Brit. Scr.* No. 23) I, 364: . . . *Godes cyrcean he nyðerade, and þa bisceoprices and abbotrices, þe þa ealdras on his dagan feollan, ealle he hi oððe wið feo gesealde, oððe on his agenre hand heold, and to gafle gesette, forðan þe he aelces mannes, gehadodes and laewedes, yrfenuma beon wolde, . . .* (God's church he brought low, and the bishoprics and abbacies whose elders [heads] in his days fell, them all he either sold for money or kept them in his own hand and farmed them out for rent, for that he would be the heir of every man, of clerk and of layman).

[19] For the fact that this right was first exercised by William II see Stubbs, *Const. Hist.* I, 325, note 2 c 10 § 106 and Freeman, *The Reign of William Rufus II*, 564 ff. appendix W.

[20] See note 22. Compare further Florentius Wigorniensis, *Chron.* year 1093 (ed. Thorpe II, 30): *Qui cum se putaret cito moriturum, ut ei sui barones suggesserunt, vitam suam corrigere, ecclesias non amplius vendere, nec ad censum ponere . . . promisit.*

[21] *Leg. Edw. Conf.* c 11 De Denegeldo, § 1: From the Danegeld, originally a tax of 12 denarii on each hide of land to enable the king to enlist soldiers against the attacks of the Danes, is to be freed *omnis terra quae de ecclesiis propria et dominica erat, . . . quia majorem fiduciam in orationibus sanctae ecclesiae habebant quam in defensionibus armorum. Et hanc libertatem habuit sancta ecclesia usque ad tempus Willielmi junioris, qui de baronibus totius patriae auxilium petiit ad Normanniam retinendam de fratre suo Roberto eunte Jerusalem. Ipsi autem concesserunt ei IV sol. de unaquaque hida, sanctam ecclesiam non excipientes; quorum dum fieret collectio, clamabat ecclesia, libertatem suam reposcens, sed nichil sibi profuit.*

[22] *Carta Henrici I* (printed in *Statutes of the Realm* I, 1 and by Liebermann

an escheated knight's fee, but—after some vacillation—as a fief which, owing to the minority of the vassal, was subject to the liege lord's administration and usufruct.

To the reign of Henry I belongs the first great struggle in England between state and church. The dispute turned upon the relation of the bishops to the king. Anselm, archbishop of Canterbury, was the leader of the church party. He had repeatedly had differences with William II, especially as touching money, had consequently retired in dudgeon from England, and remained, during the latter years of that king's reign, in Italy and France. Abroad he came in contact with Hugo of Lyon; with Urban II then, and with Pascal afterwards, pope, who alike pursued the quarrel about investitures against the German emperors, Henry IV (1056–1106) and Henry V (1106–25). Returning to England at the invitation of Henry I, he refused to do him the accustomed homage. He also refused in future to consecrate the bishops whom the king, according to the custom hitherto prevailing, had invested with the pastoral staff and ring. In long negotiations with the pope and the archbishop the king endeavoured to uphold his rights. At last at a gemot held in London in 1107 a settlement was reached, the exact terms of which are not ascertainable with complete certainty from the extant evidence. We know, however, that the king surrendered his right of investing with staff and ring; on the other hand he does not seem to have admitted in favour of the chapters any limitations whatever of his own right to fill vacant sees.[23] Anselm,

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in *Transactions of the Royal Historical Society* 1894 p. 40): . . . *Et quia regnum oppressum erat iniustis exactionibus, ego respectu Dei et amore quem erga vos omnes habeo, sanctam Dei aecclesiam imprimis liberam facio: ita quod nec vendam nec ad firmam ponam nec, mortuo archiepiscopo sive episcopo sive abbate, aliquid accipiam de dominio aecclesiae vel de hominibus eius, donec successor in eam ingrediatur.* . . .

[23] Eadmer, *Historia Novorum* (*Rer. Brit. Scr.* No. 81) p. 186: . . . *Dehinc praesente Anselmo, astante multitudine, annuit rex et statuit ut ab eo tempore in reliquum nunquam per dationem baculi pastoralis vel anuli quisquam episcopatu aut abbatia per regem vel quamlibet laicam manum in Anglia investiretur, concedente quoque Anselmo ut nullus in praelationem electus pro hominio quod regi faceret consecratione suscepti honoris privaretur.* Rule, Introduction to *Eadmer*, *l.c.* pp. xlii ff. assumes that Eadmer had no accurate knowledge of the final settlement, but that he bases his account, especially in so far as it relates to homage, on Paschal's letter to Anselm during the course of the negotiations (letter mentioned by Eadmer, *l.c.* 178 under the year 1106). The account is taken directly or indirectly from Eadmer, *Hist. Nov.* by Florentius Wigorniensis, *Chronicon* (ed. Thorpe) II, 56, by Rad. de Diceto, *Abbreviationes Chronicorum* (*Rer. Brit. Scr.* No. 68) I, 236, by Hoveden, *Chronica* (*Rer. Brit. Scr.* No. 51) I, 164, by Matthaeus Parisiensis, *Chronica Majora* (*Rer. Brit. Scr.* No. 57) II, 134, and by others, as also in *Flores Historiarum* (the so-called Matthaeus Westmonasteriensis. *Rer. Brit. Scr.* No. 95) II, 40. William of Malmesbury, *Gesta Regum* (*Rer. Brit. Scr.* No. 90) II, 493, before whom Eadmer's account lay (*l.c.* II, 489): *Investiturum annuli et baculi indulsit in perpetuum; retento tamen electionis et regalium privilegio.* Anglo-Saxon Chronicle (*Rer. Brit. Scr.* No. 23) I, 368: *se cyng . . . to Augustes aginne on Westmynstre waes, and þaer þa biscopricen and abbodricen geaf and sette, þe on Englelande oððe on Normandige buton ealdre and hyrde* (The king was at the beginning of August

on his part, withdrew his opposition to the doing of homage by the bishops in respect of their temporal possessions.[24] In the future as in the past they were in this regard subject to feudal law.

The success obtained only emboldened the church party to urge new demands.[25] But Henry was bent on maintaining to the full

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in Westminster and there bestowed the bishoprics and abbacies which in England or in Normandy were without head or shepherd). Hugo Cantor (written before 1128; *The Historians of the Church of York* (*Rer. Brit. Scr.* No. 71) II, 110: *Propter interdictum et anathema Romanae ecclesiae rex tandem investituras dimisit, dimissione quidem qua nihil aut parum amisit, parum quidem regiae dignitatis, nihil prorsus potestatis quem vellet intronizandi . . . Sed si fas est dici, adhuc habet ecclesia decimantes mentam et anethum, et colantes culicem, et deglutientes camelum, de manuali investitura tumultuantes, de electione et consecrationis libertate nihil mutientes. . . .*

Eadmer, *Vita Anselmi* (*Rer. Brit. Scr.* No. 81 p. 414) goes much further: *Rex . . . antecessorum suorum usu relicto, nec personas quae in regimen ecclesiarum sumebantur per se elegit, nec eas per dationem virgae pastoralis ecclesiis quibus praeficiebantur investivit.* Similarly *MS. codex abb. Croiland sub Joiffrido abbate* p. 140, quoted by Spelman, *Concilia* II, 28 (this *codex* is not identical with the Chronicle of the Pseudoingulph of Croyland): *rex . . . concilio* (the clergy and barons) *. . . constituto . . . investituras amodo Ecclesiarum, per annulum et baculum remisit; electiones Praelatorum omnibus ecclesiis libere concessit; Episcopatuum et Abbatiarum vacationes successoribus restituendas integre promisit, ac omnia alia, quae sancta mater Ecclesia diu antea suspiraverat, regali munificentia contulit, suis tantum juribus regalibus sepositis et exceptis.* Anselm in a letter to the pope (printed in Eadmer, *Hist. Nov.* [*Rer. Brit. Scr.* No. 81] p. 191, under the year 1108; according to Rule, Introduction to Eadmer, *l.c.* pp. xlii ff. to be assigned to 1105) declares: *. . . Rex . . . oboedienter suscipiens vestram jussionem, investituram ecclesiarum, renitentibus multis, omnino deseruit. . . . Rex ipse in personis eligendis nullatenus propria utitur voluntate, sed religiosorum se penitus committit consilio. . . .*

[24] Paschal II in a letter to Anselm (in Eadmer, *Hist. Nov.* [*Rer. Brit. Scr.* No. 81] p. 178 under the year 1106) had, without surrendering the principle, allowed the latter to withdraw his opposition to the doing of homage by the bishops: *Quod Anglici regis cor ad apostolicae sedis oboedientiam omnipotentis Dei dignatio inclinavit, eidem miserationum Domino gratias agimus, . . Quod autem et regi . . . adeo condescendimus, eo affectu et compassione factum noveris, ut eos qui jacebant erigere valeamus. Qui enim stans jacenti ad sublevandum manum porrigit nunquam jacentem eriget, nisi et ipse curvetur. Caeterum, quamvis casui propinquare inclinatio videatur, statum tamen rectitudinis* (with double meaning) *non amittit. Te autem, . . . ab illa prohibitione . . . absolvimus, quam ab antecessore nostro sanctae memoriae Urbano papa adversus investituras aut hominia factam intelligis. Tu vero eos qui investituras acceperunt, aut investitos benedixerunt, aut hominia fecerunt, . . . suscipito, et eos . . . absolvito. . . .* Rule, Introduction to Eadmer *l.c.* pp. xlii ff., assumes that Eadmer's statement, *Hist. Nov.* (cf. note 23), according to which a permanent settlement as to the bishops' homage was reached in the council of 1107, is arbitrary and only drawn from the above mentioned letter. He infers from a statement in Eadmer, *Hist. Nov.* 237 (the inference is not a necessary one) that as early as 1116 the difference between the *homagium* of lay vassals and the *fidelitas* of the bishops (cf. Stubbs, *Const. Hist.* I, 386 c 11 § 123; III, 302, 304 c 19 §§ 377, 378; III, 532 c 21 § 462; Friedberg, *De fin.* p. 173) was known, and that it is a reasonable surmise that the establishment of this difference was a consequence of the events of 1107.

[25] The growing character of the papal claims is well shown by a letter written

the prerogatives inherited from his forefathers. When, for example, in 1116 the pope sent a legate, Anselm, abbot of St. Saba, to England to take up his abode there and to thwart the native archbishops, the king forbade the legate to enter the country.[26] Moreover mention is made of cases in his reign in which the resolutions of church councils were framed with the consent or confirmation of the king or the secular magnates.[27] What legal effect attached, in the opinion of contemporaries, to such a confirmation, can no longer be ascertained.

In spite of Henry's vigorous exercise of the royal power, a second considerable advance of the papacy falls within his reign. A dispute between the archbishops of Canterbury and York as to official position and precedence ended in the former's accepting the position of papal legate (1126).[28] He thus became an official of the papacy, which the archbishops of Canterbury had not hitherto been. His example was followed by later archbishops.[29] For the future then the right of the pope to intervene in the archbishop's administration could not well be challenged. It is especially to the fact that the highest authority in the English church was, as a rule, a permanent papal legate that we must trace the notable increase of appeals to the pope which presently showed itself, particularly during the next reign.

Stephen's reign was characterized by pliability to ecclesiastical claims. That was the form in which the king paid the clergy for their support of his usurpation. In his second charter (1136)[30] express mention is made of the confirmation of the king by pope Innocent II. Among several concessions to the church which are contained in this charter,[31] the following may be emphasized as

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in 1115 by Paschal II to the king and the English bishops (printed in Eadmer, *Hist. Nov.* [*Rer. Brit. Scr.* No. 81] p. 232). Four demands are therein formulated: 1. Confirmation by the pope upon the election or translation of bishops; 2. Reservation to the pope of final decision in all judicial proceedings against bishops; 3. Freedom of appeals to the pope; 4. Councils to be held only with the pope's knowledge. It is alleged that in all these respects the pope's right was contravened in England.

[26] Compare § 24, note 4. [27] Compare § 54, notes 25 and 26.

[28] Compare § 34, note 12. [29] Compare § 34, note 15.

[30] Printed in appendix II.

[31] According to Henry of Huntingdon (*Rer. Brit. Scr.* No. 74) Bk. VIII § 3 p. 258 the king had already made some concessions, for the most part contained in the charter of 1136 (among them two of those mentioned above) at Christmas 1135. Stubbs, *Const. Hist.* I, 347, note 2 c 10 § 113, however, supposes that there is a confusion here with the later charter. The passage runs: *Inde perrexit rex Stephanus apud Oxeneford, ubi recordatus est et confirmavit pacta, quae Deo et populo et sanctae ecclesiae concesserat in die coronationis suae* (26th Dec. 1135). *Quae sunt haec: Primo vovit, quod defunctis episcopis nunquam retineret ecclesias in manu sua, sed statim electioni canonicae consentiens episcopis eas investiret. Secundo vovit, quod nullius clerici vel laici silvas in manu sua retineret, sicut Henricus rex fecerat, qui singulis annis implacitaverat eos, si vel venationem cepissent in silvis propriis, vel si eas ad necessitates suas extirparent vel diminuerent. . . . Tertio vovit, quod Denegeldum, id est, duos solidos ad hidam, quos antecessores sui accipere solebant singulis annis, in aeternum condonaret. Haec principaliter Deo vovit, et alia, sed nihil horum tenuit.*

peculiarly important: in suits against the clergy and in suits as to the private property of church officials and of the church[32] the ecclesiastical courts are recognized as exclusively competent; the king promises to entrust to the chapters during episcopal vacancies the management of the possessions belonging to the bishopric; the testamentary dispositions of the clergy are to be observed; in case any die intestate, their property shall be distributed according to the judgment of the church *pro salute animae* (*i.e.* to ecclesiastical foundations and to the next of kin);[33] lastly, the charter contains an allusion to the way in which the appointment of bishops is to take place: it is to be 'in canonical form' (*i.e.* by election of the chapter).[34]

In certain other respects too the want of a strong government led to marked progress in the realization of the pretensions of the church, if only as a matter of fact and without general and express concession.

Henry II had fought in conjunction with his mother Matilda (daughter of Henry I) against Stephen for the possession of the throne. By a compromise (1153) Stephen was recognized as king and Henry designated as his successor. Thus Henry II had no need to purchase his tenure of the crown from parties in the state. In the charter[35] issued at his accession he confirmed not the concessions of Stephen but the engagements entered into by his grandfather Henry I.

During the reign of Henry II the second great struggle between state and church ensued. The leader of the church party was Thomas Becket. Already as royal chancellor a high[36] officer in the administration, he was, at the king's instance, elected archbishop of Canterbury (1162). The object at which Henry aimed was perhaps to unite the control of church and state in a single office. But Becket defeated the project by resigning the chancellorship.[37] Minor differences followed.[38] The struggle about principles began at the

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[32] So perhaps the expression *distributionem bonorum ecclesiasticorum* is to be understood. But perhaps only *distributio* after the death of the holder is meant, as to which the charter contains further on a more precise regulation.

[33] For the connexion of this provision with other legislation as to intestacy compare § 60, notes 118 ff.

[34] *Donec pastor canonice substituatur.*

[35] Printed in appendix III.

[36] The chancellorship in these times gradually gained in importance. Probably in Becket's day the post of justiciar was regarded as the higher (cf. Stubbs, *Const. Hist.* I, 647, note 2 c 13 § 163); nevertheless Becket's personal influence during his chancellorship gave him the greater weight.

[37] The date of Becket's resignation is uncertain. Stubbs, *Const. Hist.* I, 499 c 12 § 139. According to the same authority (*Const. Hist.* I, 381 c 11 § 121), it had previously been the custom for royal chancellors to resign office as soon as they were promoted to bishoprics. But meanwhile the position of the chancellor had become of greater consequence.

[38] Becket demanded the restitution of lands which had been taken, in his opinion unjustly, from the archbishopric of Canterbury. At Woodstock, July, 1163, he opposed the king's design of a change in the mode of levying a certain land tax (apparently the old Danegeld; Stubbs, *Const. Hist.* I, 499 c 12 § 139).

synod of Westminster in October, 1163. The immediate occasion was supplied by the king's proposals to limit the right of the clergy to be tried by ecclesiastical tribunals. As the reign of Henry II is one of the most important for radical improvements in the administration of secular law, it is probable that these proposals touching the spiritual courts were only parts of a more extensive scheme of reform.[39] Becket resisted. The king thereupon returned to the position he had held when issuing his first charter: he required the bishops to abide by the legal usage in the days of his grandfather, Henry I.[40] But an unconditional agreement of this sort the bishops were not prepared to make; inserting in their answer the reservation *salvo ordine*, they sought to leave the door still open for a future claim to more extensive rights, especially those accorded them by Stephen. No settlement being reached at Westminster, the dispute was continued at the national council of Clarendon, January, 1164. By the king's command what he wished to be recognized as valid law upon the chief debatable points—because 'it had been practised of Henry I and other ancestors'—was put into writing.[41] The document so drawn up is known as 'the Constitutions of Clarendon.' The constitutions were accepted by the barons and by the bishops, who were partly intimidated by the king's threats. Becket hesitated to the last; but seeing himself deserted by his brethren he ended by expressing acquiescence.[42]

The constitutions[43] thus accepted contain, as the circumstances of their production would lead us to expect, many provisions in limitation of ecclesiastical as against temporal jurisdiction. But, in addition, there is a whole series of regulations upon other matters: the permission of the king is required before land belonging to the king's feud can be given in perpetuity to the church, as also his

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[39] Stubbs, *Const. Hist.* I, 503 c 12 § 140.

[40] The state of the law under Henry I was also appealed to in the struggles which preceded the issue of *Magna Carta* (1215), principally, indeed, not with reference to church law but to feudal law. Roger de Wendover, *Flores Historiarum* (*Rer. Brit. Scr.* No. 84) II, 84, 111, 113. Radulphus de Coggeshale, *Chronicon* (*Rer. Brit. Scr.* No. 66) 170.

[41] *Const. Clarendon* (in appendix IV) . . . *facta est recordatio et recognitio cujusdam partis consuetudinum, et libertatum, et dignitatum antecessorum suorum, videlicet regis Henrici avi sui et aliorum, quae observari et teneri debent in regno.* (Join *Henrici et aliorum* [*sc. antecessorum*]; *quae* refers to *consuetudines, libertates et dignitates.* In Stubbs, *Select Charters* a comma is placed after *sui*, whilst that after *aliorum* is omitted.)—Anselm, too, had in 1095 promised to observe the *consuetudines*; it was not till later that he endeavoured to modify his undertaking. Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) 84; cf. Anselm's report, above, note 17.

[42] Whether after initial refusal he at last even appended his seal, is doubtful. Cf. Perry, *Hist. of Engl. Ch.* I, 240 c 15 § 10. Hefele, *Konziliengesch.* § 625; 2nd Edit. V, 628 ff. According to Stubbs (*Const. Hist.* I, 504 c 12 § 140) the absence of consistent testimony prevents us from tracing the details of Becket's gradual surrender, the impression of his contemporaries being that he was temporizing or acting deceitfully. From the side hostile to Becket see especially the account in the letter of Gilbert Foliot, bishop of London (written 1166) in *Materials for Hist. of Becket* (*Rer. Brit. Scr.* No. 67) V, 527 ff.

[43] Text in appendix IV.

licence is needed for prelates to go abroad and for appeals to be made to the pope; the king must be approached before a tenant-in-chief of his or a royal servant can be excommunicated or his lands put under interdict; the holdings of the prelates are expressly declared to be feudal, and the administration and usufruct thereof during vacancy are assigned to the king; episcopal and abbatial elections are to be held by the more prominent members of the vacant church (*potiores personae ecclesiae*) in the king's chapel; and must have the assent of the king with the counsel of the magnates of the realm (*personae regni*[44]) by him summoned for this purpose.

Henry sent the constitutions to the pope with the request that he too would signify his concurrence therein. The pope declined. The king repeated his request supporting it by letters from Roger, archbishop of York and apparently also from Becket.[45] But the pope remained firm. Becket was now desirous of recalling his promise.[46] A new disagreement arose. One of the temporal magnates brought a complaint before the king's court, alleging that the archiepiscopal court had refused to do him right. When, in consequence, a summons issued against the archbishop, the latter did not obey the call. For this disobedience the king cited him to appear before the council of Northampton (October, 1164). The archbishop was condemned to pay a fine and in so far submitted that he gave security for its payment. The king then, to complete his humiliation, demanded that he should produce accounts of his administration of the chancellorship. Becket now declined to accept the verdict of a royal court and appealed to the pope. For this repudiation of the royal court the archbishop was sentenced to imprisonment.[47] He, however, succeeded in staying the publication of the sentence and fled for refuge to France. Henry's ambassadors and Becket himself repaired to the pope at Sens, where the latter disallowed ten out of the sixteen chapters of the constitutions of Clarendon as being in contradiction of the canons.[48]

Six years of struggle ensued. Becket conducted his share therein from France, being vigorously supported by the French king, Louis

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[44] For the meaning of *personae regni* see appendix IV, note 10.

[45] Hefele, *Konziliengeschichte* § 625; 2nd Edit. V, 629, notes 2 and 3. Letter of Alexander III to Becket 27th Feb. 1164 (*Materials for the History of Becket* [*Rer. Brit. Scr.* No. 67] V, 86): . . . *rex* . . . , *ut suo desiderio faciliorem animum praeberemus, fraternitatis tuae et praedicti archiepiscopi* (of York) *ad nos litteras impetravit.* (For *fraternitatis tuae* one MS. reads *fratrum nostrorum*, which, in another, is interlined as alternative. *l.c.* note 3.)

[46] The pope had so advised him even before he had cognizance of the negotiations at Clarendon: . . . *Si autem jam dicto regi super hujusmodi vos in aliquo astrictos cognoscitis, quod promisistis nullatenus observetis, sed hoc potius revocare curetis, et de promissione illicita Deo studeatis et ecclesiae reconciliari.* *Mat. for Hist. Becket* (*Rer. Brit. Scr.* No. 67) V, 84. It is doubtful whether Becket received this letter before the council or just after it. *l.c.* note *a*.

[47] By a letter of June, 1165 (*Mat. for Hist. Becket* [*Rer. Brit. Scr.* No. 67] V, 178) Alexander III declared this sentence void on the ground of its injustice.

[48] Constitutions 1, 3, 4, 5, 7, 8, 9, 10, 12, 15. *Mat. for Hist. Becket* (*Rer. Brit. Scr.* No. 67) V, 71 ff. Hefele, *Konziliengeschichte* § 626; 2nd Edit. V, 638.

VII. But the pope was loth to assent to the employment of harsher measures. When, at last, an interdict was clearly impending, Henry became reconciled to Becket (1170) and allowed his return, although Becket, on his part, did not promise to recall his measures against bishops and clerks who had remained faithful to the king. No arrangement was made concerning the constitutions.[49] The archbishop went back to England, and celebrating his triumph by numerous excommunications, provoked the king to utter a wish that someone would deliver him from the truculent priest. The result was the murder of the archbishop in the cathedral of Canterbury (1170).

Becket now appeared in the light of a martyr. The king's enemies charged him with having instigated the murder. His political opponent, the king of France, urged the pope to severity. In Rome the issue of an interdict could with difficulty be prevented. All this constrained Henry to change his line of action, and after some preliminary negotiations he concluded at Avranches in September, 1172, a formal contract with the pope's legate. Therein he promised—apart from certain points of only temporary importance —first, that in ecclesiastical cases he would permit free appeal to Rome and the execution of the papal decisions, reserving, however, to himself the right of requiring security that the appellants did not seek the harm of the realm or his own; secondly, that he would abolish the customs which had been introduced in his time to the prejudice of the church. He also released the bishops from the oath which they had taken to observe the constitutions of Clarendon. But no general renunciation of the matter of those constitutions was expressed.[50]

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[49] As to the stipulations between the king and Becket see the report of the latter to Alexander III, *Materials l.c.* VII, 326 ff. and Henry's act of reconciliation and restoration, *l.c.* VII, 343.

[50] A document (printed in Hoveden [*Rer. Brit. Scr.* No. 51] II, 36; also in *Materials l.c.* VII, 516) expressing the reconciliation of 1172, was drawn up by the legates Albertus and Theodinus on one side and the king on the other. The following conditions of absolution were imposed on the king, and he, as also his son, promised and swore to observe them: He was to pay the money needed to equip 200 knights for one year, the men to be employed in the defence of Jerusalem; he was himself to undertake a crusade within three years; the possessions confiscated during the quarrel with Becket from clergy and laity were to be restored. *Apellationes nec impedietis, nec permittetis impediri, quin libere fiant in ecclesiasticis causis ad Romanum pontificem, bona fide, absque fraude et malo ingenio, ut per Romanum pontificem causae tractentur, et suum consequantur effectum: sic tamen, ut si vobis suspecti fuerint aliqui, securitatem faciant, quod malum vestrum vel regni vestri non quaerunt. Consuetudines quae inductae sunt contra ecclesias terrae vestrae in tempore vestro, penitus dimittetis . . . et jurastis ambo, quod a domino papa Alexandro et catholicis successoribus ejus, quamdiu vos sicut antecessores vestros et catholicos reges habuerint, minime recedetis.* (The last condition is to be understood as a promise not to give his adherence to the antipope. For a subsequent interpolation in this last clause by which it was made to appear as if Henry had intended to acknowledge the suzerainty of the pope see Hefele, *Konziliengesch.* 2nd Ed. V, 685. Cf. below § 4, note 64.)—Report of the legates to the archbishop of Ravenna

From the construction of the agreement it is evident that it was only in the question of appeals that the pope had obtained a material concession of permanent significance; as regards the other provisions of the constitutions of Clarendon his only success had been in preventing the church's recognition of their binding force, so that in this respect the rule of law on several points remained, as before, a matter of dispute between king and clergy.[51]

Such a solemn determination of the law as had been made in the constitutions was not without its effect upon the practice of a future time. The royal tribunals applied their provisions, in so far as these had not afterwards been expressly renounced, as being of legal validity, and these provisions lie at the root of later constitutional enactments. Thus the later statutes of provisors and mortmain are only elaborations of the two first chapters of the constitutions of Clarendon.

After the reconciliation at Avranches Henry, who had to contend at home with rebellions of his sons, assumed a friendly attitude towards the pope.[52] In 1173 he gave an assurance that he would allow greater freedom at the elections of bishops.[53] In 1176 he concluded an agreement with the papal legate Hugo, by which on one side the king, in contrast to the provision of the constitutions of Clarendon, conceded the principle that it should not be permissible in penal cases to bring the person of a clerk before a royal court;

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as to the conclusion of the reconciliation (Hoveden, *l.c.* II, 37): . . . *Relaxavit* (the king) *praeterea episcopos de promissione quam ei fecerant de consuetudinibus conservandis, et promisit quod non exiget in futurum.*

[51] It remained disputed, in regard to appeals, what were to be regarded as ecclesiastical affairs. In regard to the other matters dealt with in the constitutions, it remained disputed whether the provisions were newly introduced by Henry II or had been, as was contended in the constitutions themselves, the law under Henry I and his predecessors. The non-exercise of some rights by Stephen did not invalidate them. The reconciliation of Avranches likewise contains nothing to that effect.—Thus the suggestion in Stubbs, *Const. Hist.* I, 513 c 12 § 143 that the king renounced the constitutions seems to go too far.

[52] Nevertheless he by no means submitted unconditionally and occasionally enforced the old rights of the crown. Thus in 1176 the legate Vivian, who entered England without permission on the way to Scotland, was sharply reminded of the necessity of such permission. Compare § 24, note 8.

[53] Letter of Henry II to Alexander III (*Materials l.c.* VII, 553): *Novit ecclesia Romana ex longo temporis tractu quantam libertatem antecessores nostri circa institutiones ecclesiarum habuerint; quam nos, intuitu Dei et precum vestrarum interventu, secundum admonitiones venerabilium virorum Alberti et Theodwini legatorum vestrae sanctitatis, ad aequitatem canonicae moderationis temperavimus. Impraesentiarum itaque liberam electionem ecclesiae Anglicanae annuimus,* . . . This seems to express an allowance of free election for some time to come, not a permission to elect once to sees then vacant. The election to six bishoprics then vacant took place (Rad. de Diceto [*Rer. Brit. Scr.* No. 68] I, 367): . . . *conveniente clero, sub paucorum interstitio dierum . . . apud Westmonasterium, praesente justiciario regis et assensum praebente.*—The concession which Henry made, perhaps consisted in his promising to allow the electors greater freedom in the choice of the person. Cf. letter of Alexander III to Henry II dated 9th October, 1169 (*Materials l.c.* VI, 505): . . . *Nec velis eis qui electionem facturi sunt personam de qua electionem facere debeant nominare.*

on the other side, the legate recognized some exceptions to this rule.[54]

The pope smoothed the way for the king to the complete subjugation of Ireland.[55] The same influence moreover enabled Henry once or twice in the latter years of his reign to levy a new tax, personal property being now for the first time brought under contribution, and the clergy no less than the laity rendered liable for its payment.[56] From this time dates the policy, often revived in

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[54] Henry confirmed the terms of the reconciliation in a letter to the pope printed in Radulf de Diceto, *Ymagines Historiarum* (*Rer. Brit. Scr.* No. 68) I, 410; excerpts given in Roger de Wendover, *Flores Historiarum* (*Rer. Brit. Scr.* No. 84) I, 105: *Domino papae rex Anglorum. Propter reverentiam sanctae Romanae ecclesiae, atque devotionem quam erga eam et paternitatem ac dilectionem vestram et fratrum vestrorum habemus et semper habuimus, licet plurimum resisterent et reclamarent regni nostri majores et magis discreti, ad instantiam viri discreti et sapientis Hugonis Petrileonis, sanctae Romanae ecclesiae cardinalis, apostolicae sedis legati, amici et cognati nostri, capitula quae subscripta sunt in regno nostro tenenda concessimus. (I) Videlicet quod clericus de caetero non trahatur ante judicem secularem in persona sua de aliquo criminali, neque de aliquo forisfacto, excepto forisfacto forestae meae, et excepto laico feodo* [Rog. de Wendover *l.c.* abbreviates *pro aliquo crimine vel transgressione, nisi pro foresta et laico feodo*] *unde michi vel alii domino seculari laicum debetur servitium. (II) Concedo etiam quod archiepiscopatus, episcopatus, et abbatiae non teneantur in manu mea ultra annum, nisi urgente necessitate et evidenti de causa quae propter hoc non fuerit inventa ut diutius teneantur. (III) Concedo etiam quod interfectores clericorum, qui eos scienter vel praemeditati interfecerint, convicti vel confessi coram justitiario meo, praesente episcopo vel ejus officiali, praeter consuetam laicorum vindictam, suam et suorum de haereditate quae eos contingit perpetuam sustineant exhaeredationem. (IV) Concedo etiam quod clerici non cogantur facere duellum.*

[55] Compare § 11, note 10.

[56] It is doubtful whether a tax of this kind (contribution to crusade) had been already levied 1184 (1185). A document relevant here is printed in Wilkins, *Conc.* I, 490:

Dispositio ad subveniendum terrae Jerusalem a domino Philippo, rege Franciae, et Henrico rege Angliae, communi concilio episcoporum et comitum et baronum terrarum suarum approbata.

Art. I. *Quod unusquisque tam clericorum quam laicorum, qui plus quam* 100 *solidos non habuit, de unaquaque domo, quam habuerit, si singulis diebus ignis consuetudinarie accendetur,* 2 *d, singulis annis usque ad tres annos persolvet.*

Art. II. *Si vero in mobilibus plus quam* 100 *solidos habuerit, de unaquaque libra . . . in Anglia unus sterlingus persolvetur usque ad praedictum terminum.*

Art. III. *Qui vero* 100 *libras in terris vel in reditibus habuerit, vel eo amplius, de* 100 *lib.* 20 *s. annuatim dabit.*

Art. IV. *Qui vero in reditibus minus quam* 100 *libras habuerit, de* 20 *lib. dabit* 4 *solid. et de* 40 *lib.* 8 *solid. et ita deinceps, ad rationem praedictam. . . .*

Art. VI. *Decima debetur ad defensionem terrae Jerusalem, a nativitate S. Johannis Baptistae anno . . .* 1184 *in decem annos, salvo jure dominorum et ecclesiarum.*

But the genuineness of the document is disputable (Stubbs, *Const. Hist.* I, 622, note 4 c 13 § 161).

After the taking of Jerusalem by Saladin (1187) a *Saladin tithe* was granted for the crusade (1) from the continental possessions of Henry II at the assembly of spiritual and temporal magnates at Mans; (2) from England at the national council of Geddington (Feb. 1188). Hoveden (*Rer. Brit. Scr.* No. 51) II, 335;

later reigns, of keeping the national church in check by the mediation of the pope and his legates.[57] For papal assistance of this kind Henry and other kings after him had to pay the price by suffering the pope to introduce, in various forms, taxes upon the clergy for papal objects.[58] The growing demands of Rome for money led naturally to the exhibition in following centuries of occasional opposition by the English clergy to the pope, but of opposition which was never so strong that a determined resistance was permanently offered to papal pretensions.

The short reign of Richard I furnishes little of interest for the history of the constitution of the church. The king came but twice to England. He was first at the crusade, then in confinement, lastly at war upon the continent, leaving his ministers to rule in his absence. For several years in succession Hubert Walter, archbishop of Canterbury, filled the office of chief justiciar, with the effect that any considerable friction between ecclesiastical and civil administration was excluded. In 1198 he resigned the civil office at the desire of pope Innocent III.[59]

In the same year the king had ordained the collection of a land tax. Of ecclesiastical possessions only the free land (*libera feoda*) of parish churches was to be exempted.[60] The monks demurred to the payment of the tax. By way of answer the king proclaimed that

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Benedict (*l.c.* No. 49) II, 31. In March, 1188, a corresponding grant was made at Paris for France. Hefele, *Konziliengesch.* 2nd Ed. V, 738. These first grants of the new tax were, indeed, for ecclesiastical objects, but soon the same tax was raised for temporal purposes.

[57] Perry, *Hist. of Engl. Ch.* I, 268 c 16 § 11.

[58] For a first attempt on the part of the pope to levy a regular tax in England see Benedict (*Rer. Brit. Scr.* No. 49) I, 311: *Interim* (1184) *papa Lucius misit nuncios suos ad regem Angliae, postulans ab eo, et ab clericatu Angliae, auxilium ad defensionem patrimonii beati Petri contra Romanos. Rex vero in Angliam misit nuncium suum ad episcopos Angliae, ut per eorum consilium providentius responderet nunciis domini papae. Illi vero congregati Lundoniis coram Ranulfo de Glanvil, justitiario regis, de communi eorum consilio mandaverunt domino regi, quod in consuetudinem verti posset ad detrimentum regni, si permitteret nuncios domini papae in Angliam venire ad collectam faciendam. Et ideo de eorum consilio erat, ut dominus rex secundum voluntatem suam et honorem, auxilium faceret domino papae. Dicebant enim, quod tolerabilius esset, et plus eis placeret, quod dominus rex de eis acciperet, si vellet, recompensationem auxilii quod ipse faceret domino papae. Quorum consilio dominus rex adquievit.*—Voluntary contributions had been collected from the English clergy some years before. Ralf de Diceto, *Ymagines Historiarum*, year 1173 (*Rer. Brit. Scr.* No. 68) I, 378: *Nicholaus Romanae ecclesiae subdiaconus, a domino papa transmissus, ab archiepiscopis, episcopis, abbatibus, abbatissis, prioribus, archimandritis, plurimam collegit pecuniam in usus ecclesiae laborantis in scismate convertendam.*

[59] Hoveden (*Rer. Brit. Scr.* No. 51) IV, 48: . . . *dominus papa paterna exhortatione diligenter monuit dominum Ricardum regem Angliae, ut pro salute animae suae non permitteret praefatum archiepiscopum diutius fungi administratione saeculari, neque de caetero ipsum, vel alium episcopum sive sacerdotem, in administratione saeculari admitteret; praecepit etiam in virtute obedientiae universis ecclesiarum praelatis, ne ipsi ausu temerario saeculares administrationes susciperent.*

[60] Hoveden (*Rer. Brit. Scr.* No. 51) IV, 47: *libera feoda ecclesiarum parochialium de hoc tallagio excipiebantur.*

thenceforth no man who had done an injury to clerk or regular should be obliged to give satisfaction to the injured. This was enough to extract payment from the monks.[61] The same procedure on the part of kings in dealing with refusals of the clergy to contribute to taxes often recurs in later times.

At the accession of king John, archbishop Hubert Walter again took high office, being appointed chancellor. Upon the archbishop's death (1205) disputes arose as to the choice of his successor.[62] In the course of the struggle pope Innocent III caused those monks of Canterbury who were present in Rome to hold an election there and consecrated (1207) Stephen Langton, the object of their choice, as archbishop of Canterbury, in spite of John's refusal of the royal assent. Thus began the third great struggle between state and church in England.

The king declined to receive Langton in his country. King and pope proceeded in quick succession to the most violent measures. In 1208 England was placed under an interdict, in 1209 the king was excommunicated, in 1212 the pope absolved John's subjects from their allegiance, declared him deposed and offered the English crown to the king of France.[63] Up to this point John had stoutly maintained his authority at home and sternly punished the clergy who opposed him. But now, dreading the invasion of a French army and dubious of the loyalty of his English barons, whom constant oppressions had alienated from his cause, he suddenly surrendered to the pope far more than the original ground of dispute. On the 15th of May he declared in the presence of the legate Pandulf that he delivered up his realms of England and Ireland to the pope and his successors, held them thenceforward only as the pope's liegeman and was willing to pay him a yearly tribute of a thousand marks sterling. Swearing fealty to the pope,[64] he bound himself to

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[61] Hoveden (*Rer. Brit. Scr.* No. 51) IV, 66: *Eodem anno* (1198), *quia viri religiosi noluerunt dare regi quinque solidos de wanagio carucae, sicut caeteri homines regni faciebant, exiit edictum a rege, ut quicunque in regno suo forisfecisset clerico, aut alii viro religioso, non cogeretur satisfacere illi; sed si clericus aut alius vir religiosus forisfecisset alicui laico, statim compelleretur ad satisfaciendum illi: unde factum est, quod viri religiosi ad redemptionem coacti sunt.*

[62] Particulars are to be found in Roger de Wendover, *Flores Historiarum* (*Rer. Brit. Scr.* No. 84) II, 10 ff. Compare Stubbs, Preface pp. xlix ff. to Vol. II of Walter de Coventria (*Rer. Brit. Scr.* No. 58).

[63] Roger de Wendover, *Flores Historiarum*, year 1212 (*Rer. Brit. Scr.* No. 84) II, 63: *Tunc papa . . . de consilio cardinalium, episcoporum et aliorum virorum prudentium, sententialiter definivit, ut rex Anglorum Johannes a solio regni deponeretur, et alius, papa procurante, succederet qui dignior haberetur. Ad hujus quoque sententiae executionem scripsit dominus papa potentissimo regi Francorum Philippo, quatenus in remissionem omnium suorum peccaminum hunc laborem assumeret, et, rege Anglorum a solio regni expulso, ipse et successores sui regnum Angliae jure perpetuo possiderent; . . .*

[64] The text of John's declaration and of the oath of fealty is given in appendix V. On Oct. 3rd, 1213, John did homage for his kingdom to the legate Nicolaus. This may serve to reconcile the somewhat conflicting accounts. Compare especially Walter de Coventria (*Rer. Brit. Scr.* No. 58) II, 210,

recognize Langton as archbishop and to replace the property withdrawn from the church during the course of the struggle.

These concessions served to stay the blow from abroad, but did not pacify the discontent at home. To detach the heads of the church from the party of the temporal barons, he issued on the 21st of November, 1214, a charter relating to the election of bishops and other prelates.[65] By this charter is granted to chapters and monastic convents the right of freely electing their prelates, with reservation, however, of the king's right to administer the property during vacancy; before an election the royal permission to elect (*licentia eligendi*) is to be obtained, but should such permission be delayed or refused, the election is to be held nevertheless; election made, the king's assent is required, but can only be withheld if reasonable cause, based on demonstrable facts, be adduced. The provisions of this charter held good in law up to the reformation, even if, in actual practice, they were not seldom evaded. They underlie the legislation of the reformation and through it exercise an influence on the law at the present day.

The aim which the king had in view in issuing the charter miscarried. The barons' rebellion broke out nevertheless, and the English bishops did not enter the lists against them. In 1215 John, confronted with the demands of the barons, found himself compelled to execute the Magna Carta. Most of the clauses of this document deal with the removal of abuses in the exercise of feudal rights and prerogatives. Incidentally, the relations of spiritual feudatories to the king and to their sub-tenants are frequently touched upon; thus the prelates appear as members of the national council to grant taxes, and other single provisions affect slightly the sphere of the church. To the church as a whole the rights it has hitherto enjoyed are confirmed with the customary general formula. More important provisions as to the relation of state and church are not contained in the Magna Carta; it was the product of a struggle between the king and the defenders of the civil constitution, not between the king and the church.[66]

214; Roger de Wendover, *Flores Historiarum* (*Rer. Brit. Scr.* No. 84) II, 74, 81, 95. In the declaration of May, appendix V, 1 we read: . . . *fidelitatem . . . facimus et juramus, et homagium . . . faciemus . . .* Upon the question whether Henry II had already in 1172 or 1173 conceded to the pope suzerainty over England see Stubbs, *Const. Hist.* I, 602, note 2 c 13 § 158. Hefele, *Konziliengesch.* 1st Ed. V, 612 ff., 2nd Ed. V, 685, 687.

[65] Printed in appendix VI. A new execution of the same charter on 15th Jan. 1215 (printed in Rymer, *Foedera*, 4th Ed. I, 126 and in Matthaeus Parisiensis, *Chronica Majora* [*Rer. Brit. Scr.* No. 57] II, 608) was confirmed by Innocent III in a bull of 30th March, 1215 (printed in Rymer *l.c.* I, 127; Matth. Paris. *l.c.* II, 607). (Matth. Par. *l.c.* V, 541, year 1256 reverts to the two documents, with the introduction: *Nota utilem cartam regis Johannis, si observaretur, de libertate electionum et confirmationem Papae Innocentii III.*) The charter is expressly maintained in the Magna Carta of 1215 c 1 (cf. appendix VII). In later confirmations of Magna Carta the words in question are omitted (as superfluous).

[66] For provisions of the Magna Carta of 1215 and later alterations of it which have reference to church relations see appendix VII.

Under king Henry III the successive heads of the administration seldom ventured to oppose the pope, but sought rather to manage the business of the country in concert with him and his legates. The pope now several times appointed to the see of Canterbury and arrogated a corresponding right in individual cases (the first in 1262) as regards ordinary bishoprics.[67] Rapidly the sums demanded of the English clergy by Rome rose. But at the same time there was introduced a state taxation of purely ecclesiastical income, at first in the form of contributions from smaller church circles, such as the clergy of the several archdeaconries, the chapters or the diocesan synods. All such developments were gradual and resulted from the use in particular cases; there was no enunciation of new legal theories upon the subject.

Edward I was the first to offer once more a successful opposition to ecclesiastical encroachments. The old provisions, which had in practice become obsolete, requiring the consent of the feudal lord to the transference of land *in mortuam manum* (*i.e.* to spiritual persons or bodies), were now revived (7 *Ed. I* [1279] *Stat. de Religiosis*).[68] The pope's claim to *dominium* in Scotland, a claim which he sought to substantiate against similar pretensions on the part of the English kings, was repudiated in a letter of the barons assembled in parliament at Lincoln (1301). This letter[69] again

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[67] A detailed account of the progress of papal claims in regard to the filling of archbishoprics and bishoprics in England from the twelfth to the fifteenth century, will be found in Stubbs, *Const. Hist.* III, 310 ff., c 19 §§ 381–387.

[68] The older provisions are to be found in *Const. Clarendon* cc 2, 9 (appendix IV); *Magna Carta* of 1217 c 43 (appendix VII, note 27); 43 *Hen. III* (1259) c 18.—Compare also Bracton (*Rer. Brit. Scr.* No. 70) I, 218, 360 f.

[69] Printed in Rymer, *Foedera*, 4th Ed. I, 926:—

Sanctissimo in Christo patri, domino B. divina providentia, sanctae Romanae ecclesiae summo Pontifici, sui devoti filii, (here follow the names of 7 *comites*, 94 *domini*, 1 *castellanus*, 1 *baro*, and one without designation) *devota pedum oscula beatorum.*

Sancta Romana mater ecclesia, per cujus ministerium fides Catholica gubernatur, in suis actibus cum ea, sicut firmiter credimus et tenemus, maturitate procedit, quod nulli praejudicare, sed singulorum jura, non minus in aliis, quam in seipsa, tanquam mater alma, conservari valet illaesa.

Sane, convocato per serenissimum dominum nostrum Edwardum, Dei gratia, Regem Angliae illustrem, parliamento apud Lincolniam generali; idem dominus noster quasdam literas apostolicas, quas super certis negotiis, conditionem et statum regni Scotiae tangentibus, ex parte vestra receperat, in medio exhiberi, et seriose fecit nobis exponi.

Quibus auditis, et diligenter intellectis, tam nostris sensibus admiranda, quam hactenus inaudita, in eisdem audivimus contineri.

Scimus enim, pater sanctissime, et notorium est in partibus Angliae, et nonnullis aliis non ignotum; quod, a prima institutione regni Angliae, Reges ejusdem regni, tam temporibus Britonum, quam Anglorum, superius et directum dominium regni Scotiae habuerunt, et in possessione vel quasi superioritatis et directi dominii ipsius regni Scotiae successivis temporibus extiterunt;

Nec ullis temporibus ipsum, in temporalibus, pertinuit, vel pertinet quovis jure ad ecclesiam supradictam;

Quinimo idem regnum Scotiae progenitoribus praedicti domini nostri Regibus Angliae, atque sibi feodale extitit ab antiquo.

clearly asserts the independence of English kings as against the pope in all temporal matters. Nor was this enough; even after the papal prohibition Edward intervened in the Scottish disorders, basing his right on his suzerainty. In the last years of his reign, the king, supported by the parliament, addressed himself to check the arbitrary taxation of monasteries by superiors abroad and the transmission of money from the realm by monks or their agents.[70]

Nec etiam Reges Scotorum, et regnum aliis, quam Regibus Angliae, subfuerunt, vel subjici consueverunt.

Neque Reges Angliae, super juribus suis, in regno praedicto, aut aliis suis temporalibus coram aliquo judice ecclesiastico, vel seculari, ex libera praeheminentia status suae regiae dignitatis et consuetudinis, cunctis temporibus irrefragabiliter observatae, responderunt, aut respondere debebant.

Unde, habito tractatu, et deliberatione diligenti, super contentis, in vestris litteris memoratis, communis, concors et unanimis omnium, et singulorum consensus fuit, est, et ecrit inconcusse, Deo propitio, in futurum:

Quod praefatus dominus noster Rex super juribus regni sui Scotiae, aut aliis suis temporalibus, nullatenus judicialiter respondeat coram vobis, nec judicium subeat quoquomodo:

Aut jura sua praedicta in dubium quaestionis deducat:

Nec ad praesentiam vestram procuratores aut nuncios ad hoc mittat; praecipue cum praemissa cederent manifeste in exhaeredationem juris coronae regni Angliae et regiae dignitatis, ac subversionem status ejusdem regni notoriam: necnon in praejudicium libertatum, consuetudinum, et legum paternarum; ad quarum observationem et defensionem, ex debito praestiti juramenti, astringimur; et quae manutenebimus toto posse, totisque viribus, cum Dei auxilio defendemus.

Nec etiam permittimus, aut aliquatenus permittemus, sicut nec possumus, nec debemus, praemissa tam insolita, indebita, praejudicialia, et alias inaudita, praelibatum dominum nostrum Regem, etiamsi vellet, facere, seu quomodolibet attemptare.

Quocirca sanctitati vestrae reverenter et humiliter supplicamus, quatenus eundem dominum nostrum Regem (qui inter alios principes orbis terrae, catholicum se exhibet, et ecclesiae Romanae devotum) jura sua, libertates, consuetudines, et leges, absque diminutione et inquietudine, pacifice possidere: et ea illibata percipere benignius permittatis.

In cujus rei testimonium sigillis nostris, tam pro nobis, quam pro tota communitate praedicti regni Angliae, praesentibus sunt appensa.

Datae apud Lincolniam, XII. die Februarii, anno Domini MCCCI.

[70] 35 *Ed. I* (1306/7) Stat. Karlioli (=of Carlisle; called also in older collections *Statutum de asportatis religiosorum*, in *Liber Custumarum* [*Rer. Brit. Scr.* No. 12] II, 488 *Stat. de Religiosis Alienigenis*). Mention is made in the preamble of a resolution to the same purpose having been carried in 33 *Ed. I* (The petition of the secular magnates and of the *communitas* in 33 *Ed. I* is printed in *Rer. Brit. Scr.* No. 98, p. 313), the publication of which was stayed; it is now, after fresh discussion, issued as a law. The essential provisions are:—

c 2. *Ne quis Abbas, Prior, Magister, Custos seu quivis alius religiosus . . . censum aliquem per superiores suos, Abbates, Priores, Magistros, Custodes religiosarum domorum vel locorum impositum, vel inter se ipsos aliqualiter ordinatum, extra regnum . . . deferat vel transmittat. . . . Et si quis contra praesens statutum venire presumpserit, considerata qualitate delicti et regie prohibicionis pensato contemptu graviter puniatur.*

c 3. Inhibition of alien heads of houses: *ne decetero tallagia, census, imposiciones, apporta seu alia quecunque onera . . . imponant vel faciant aliqualiter assidere. . . .*

c 4. Abbots alien may visit their houses in England.

At the parliament of Carlisle (1307) there was also presented to the king a

It was probably during this reign that the issue of the *Circumspecte agatis*[71] brought about a more accurate delimitation of the competence of secular and ecclesiastical courts in several doubtful cases.

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petition against a series of encroachments by the clergy at home and by the pope. On these proceedings and measures taken in consequence see Stubbs, *Const. Hist.* III, 339, c 19 § 392; more fully in his Introduction to *Chron. of the Reigns of Ed. I and Ed. II* (*Rer. Brit. Scr.* No. 76) I, pp. cix ff.

[71] Archbishop Peckham of Canterbury had ordered at the council of Reading (1279) that the clergy should read every Sunday a number of '*ipso facto* excommunications.' Among them (Wilkins, *Concilia* II, 33; for *variae lectiones* see *Reg. Epist. Peckham* [*Rer. Brit. Scr.* No. 77] III, p. cxxiii):—

Primo, excommunicentur auctoritate concilii Oxon. a . . . Stephano Cantuariensi archiepiscopo celebrati, omnes qui malitiose ecclesias jure suo privare praesumunt, aut per malitiam, aut contra justitiam libertates earum infringere vel pertubare intendunt. Ex quo intelligimus vinculo excommunicationis subjacere omnes illos, qui literas impetrant, a quacunque curia laicali, ad impediendum processum ecclesiasticorum judicum in causis, quae per sacros canones ad forum ecclesiasticum pertinere noscuntur.

Septimo, excommunicantur omnes illi, qui malitiose contemnunt exequi mandatum domini regis de excommunicatis capiendis, . . .

Nono, excommunicantur . . . quicunque de domibus, maneriis, vel grangiis, vel locis aliis archiepiscoporum vel episcoporum, vel aliarum personarum ecclesiasticarum, contra ipsorum voluntatem . . . aliquid auferunt, vel consumunt, vel injuriose contrectant; . . .

The archbishop was compelled by the king in the same year to recall the objectionable instructions (Wilkins, *Concilia* II, 40):—

Memorandum quod venerabilis pater J. Cantuar. archiepiscopus venit coram rege et consilio suo in parliamento regis S. Michaelis, anno regni regis septimo apud Westm. et confitebatur et concessit, quod de statutis, provisionibus et declarationibus eorundem, quae per ipsum promulgatae fuerunt apud Reding. mente Augusti anno codem, inter quasdam sententias excommunicationis, quas idem archiepiscopus ibidem promulgavit.

Primo, deleatur, et pro non pronunciata habeatur illa clausula in prima sententia excommunicationis, quae facit mentionem de impetrantibus literas regias ad impediendum processum in causis, quae per sacros canones, etc.

Secundo, quod non excommunicentur ministri regis, licet ipsi non pareant mandato regis, in non capiendo excommunicatos.

Tertio, de illis, qui invadunt maneria clericorum, ut ibi sufficiat poena per regem posita . . . . . .

In spite of this revocation and of the fact that Edward I, in two prohibitions of September 28th, 1281 (printed in Wilkins, *Concilia* II, 50) warned the prelates not to do aught against the king's rights at the approaching council, Peckham, at the provincial council of Lambeth, which met October 7th, 1281, directed the clergy to read four times a year certain excommunications the text of which agreed almost exactly with those published at Reading (Wilkins, *Concilia* II, 51; var. lect. Peckham, as above, p. cxxxi). Forms 7 and 9 of the council of Reading are unchanged. Form 1 now ends: *in quo excommunicari intelligimus qui literis aut juribus curiae laicalis ecclesiasticarum causarum processum impediunt, quae ita ad ecclesiam pertinere noscuntur, quod nullatenus possunt, nec consueverunt, per seculare judicium terminari. Et hujusmodi sententia insuper de caetero denunciari praecipimus, excommunicatos omnes illos, qui falsae exceptionis titulo archiepiscopalem aut episcopalem processum impediunt, aut subterfugiunt disciplinam.* The constitutions are dated 10th October. In a letter of the 2nd November, 1281 (*Regist.* Peckham I, 239, also Wilkins, *Concilia* II, 64) Peckham endeavoured to justify himself to the king by urging that ecclesiastical were superior to secular laws.

[The chronicle of *Osney* (*Rer. Brit. Scr.* No. 36, *Annales Monastici*) IV, 285

All this was effected without any considerable struggle. But an attempt by Edward to bring the ecclesiastical property of the clergy within the scope of taxation in a more systematic way than hitherto, encountered greater opposition. In principle, the kings claimed the right to impose taxes upon their own absolute authority. In regard to the baronage and the town of London it had been laid down in the Magna Carta of 1215 that for the levying of land taxes in ordinary cases previous consent by the national council was requisite.[72] But this provision was omitted in the very next edition of the charter (1216), and not restored in later confirmations. Nevertheless, as a matter of fact, both for some time before Magna Carta and afterwards, such impositions of taxes took place, with few exceptions, only when consent had previously been given by the national council. With sections of the people not there represented negotiations were specially conducted by royal commissioners to the several counties, towns, etc. A similar procedure had come to be in vogue in regard to the church, when purely church income had been subjected to taxation.[73] According to the

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reports under the year 1280: *Non. Octobris, septimo videlicet die ejusdem mensis, dominus Johannes Cantuariensis archiepiscopus, . . . apud Lamheye sollemne concilium celebravit; . . . Caeterum in eodem concilio proposuerat quasdam libertates ad coronam domini regis spectantes et a multis retroactis temporibus usitatas annullare, videlicet cognitionem juris patronatus, prohibitiones regias in placttis de catallis et hujusmodi quae spiritualitatem mere contingere videbantur; cui rex per quosdam de suis in eodem concilio publice se opposuit, et intentando minas inhibuit, ne quid statuere praesumeret in praejudicium seu depressionem regiae libertatis. Unde factum est ut territus archiepiscopus a sua praesumptione penitus resiliret.* (Similarly but somewhat more shortly the chronicle of Wykes, printed in the same No.) The account is probably a confusion of the events of 1279 and 1281.]

In 1285 the convocation of the southern province petitioned the king for a limitation of the prohibitions. The chancellor answered; the synod made rejoinder (for the documents see Wilkins, *Conc* II, 115 ff.). Probably it was in this connexion that the king's instruction *Circumspecte agatis*, which passed into later collections of laws, was issued to his judges. It is not dated. Prynne placed it in the reign of Edward II (Stubbs, *Const. Hist.* II, 124 c 14 § 179). In *Statutes of the Realm* it appears among the enactments of 13 *Ed. I* (1285); see, however, note there.

[72] c 12: *Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam, et ad haec non fiat nisi rationabile auxilium: simili modo fiat de auxiliis de civitate Londoniarum.* These taxes, though connected with the possession of fiefs, were, however, regarded at the time not as land taxes, but as *personal*:—Bracton (*Rer. Brit. Scr.* No. 70) I, 288: *Et sunt hujusmodi auxilia personalia et non praedialia, personas enim respiciunt et non feoda, . . .*

[73] For an—unsuccessful—attempt to tax the clergy in 1207 compare: *Annales de Waverley* (*Annales Monastici*: *Rer. Brit. Scr.* No. 36; II, 258): *Rex Iohannes . . . convocatis episcopis, abbatibus et prioribus, comitibus et baronibus, et magnatibus regni, celebravit concilium Londoniis in octavis Circumcisionis: ibique convenit episcopos et abbates, ut permitterent personas et beneficiatos ecclesiarum dare regi ceriam summam redditiuum suorum. In quod cum non consentirent praelati ecclesiarum, data est dilatio usque ad sequens concilium celebrandum Oxoniae in octavis purificationis beatae Mariae; ibique congregata infinita multitudine praelatorum ecclesiae et magnatum regni*

then prevailing view prelates sat in the national council simply as feudatories; as such they were taxed there like the rest; in respect of the church income alike of the prelates and the rest of the clergy negotiation with the several bodies concerned had become customary.[74]

From the reign of John it sometimes occurred that representatives of the counties or towns were, for various purposes and in changing forms, summoned to attend the national council.[75] In like manner, from the days of Henry III, representatives of the chapters and, by degrees, representatives of the parish clergy appeared at the church provincial synods.[76] If the representatives of the lower ranks of the laity were present at the national council or of the clergy at the provincial synods, there was then an opportunity of discussing grants of taxation at these central meetings, and so saving subsequent local negotiations. The summoning of representatives of the lower ranks alike to the national councils and to the provincial synods began to be more regular in the early years of Edward I's reign. From the year 1283 the admission of chosen representatives of the parish clergy to the provincial synods became the established rule.[77] The admission of representatives of the counties and the towns to the civil national council grew, indeed, more and more frequent; but their power to co-operate in the making of laws remained, even in the following reigns, an inconstant quantity. Grants of money to be raised from counties and towns were made, from 1295 onwards, only exceptionally otherwise than by resolution of their representatives in the national council.[78]

Edward I now endeavoured, following the line of previous development, to simplify still further the negotiations with the tax-granting bodies. Accordingly he invited the clergy to decide in the general national council as to the taxation of their spirituals as well as their temporals, and bade them, to this end, send to it representatives of the inferior clergy. Such representatives were, after certain transitional measures, summoned (1295). They presented themselves and a tax upon spiritualities was granted at the council. In 1296 the lower clergy again appeared.[79] But meanwhile pope Boniface VIII

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exegit ab episcopis et abbatibus quod prius exegerat ab eis. Sed consilio inito, omnes tam Cantuarienses quam Eboracenses metropolitani unanimiter responderunt, Anglicanam ecclesiam nullo modo sustinere posse, quod ab omnibus saeculis prius fuit inauditum. Rex ergo saniori usus consilio, exactionem illam penitus relaxavit. Postea generaliter statuit per universum regnum, ut omnis homo (under this designation the clergy were included. Roger de Wendover, *Flores Historiarum*; *Rer. Brit. Scr.* No. 84; II, 35) *de cujuscunque feudo, juraret pretium catellorum suorum de immobili et mobili, et de his daret decimam tertiam partem regi* . . .

[74] Negotiations took place with diocesan synods, cathedral chapters, archdeaconries, monastic orders, etc. Some examples in Stubbs, *Const. Hist.* II, 205 c 15 § 199. In isolated cases during the reigns of Henry III and Edward I grants were made by the provincial assembly even before 1295.

[75] Compare § 21, near notes 11 ff. [76] Compare § 54, notes 31 ff.

[77] Compare § 54, notes 38 ff. [78] Stubbs, *Const. Hist.* II, 255, c 15 §§ 232, 233.

[79] Compare § 21, note 20.

had, on the 25th of February, 1296, published his bull *Clericis laicos*, in which, without having England specially in view, he forbade in general, under pain of excommunication, the payment of civil taxes upon the property of churches or of the clergy, as also the collection of such taxes, without papal authority previously obtained.[80] Having regard to this bull, the clergy in the national council of 1296 demurred to the granting of a tax.[81] To enable a definitive settlement to be reached, both provincial councils were summoned, through the archbishops, to meet at London in January, 1297.[82] But the clergy persisted in their refusal.[83] Upon this the king declared that such a refusal involved a breach of homage.[84] On the 26th of January he convened the temporal magnates of the realm, but not the spiritual, to a *colloquium* to be held on the 24th of February.[85] On January the 30th he put the clergy outside the protection of the laws and announced his intention of confiscating their fiefs.[86] Archbishop Winchelsey replied on the 10th of February by excommunicating all who transgressed the papal prohibition.[87] On February

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[80] . . . *quod quicunque praelati ecclesiasticaeque personae, religiosae vel seculares, quorumcunque ordinum, conditionis, seu statuum, collectas vel tallias, decimam, vicesimam, seu centesimam suorum et ecclesiarum proventuum vel bonorum laicis solverint, vel promiserint, vel se soluturos consenserint, aut quamvis aliam quantitatem, portionem, aut quotam ipsorum proventuum, vel bonorum aestimationis, vel valoris ipsorum, sub adjutorii, mutui, subventionis, subsidii, vel doni nomine, seu quovis alio titulo, modo, vel quaesito colore, absque auctoritate sedis apostolicae; necnon imperatores, reges, . . . et quivis alius . . . qui talia imposuerint, exegerint, vel receperint . . . eo ipso sententiam excommunicationis incurrant. Universitates quoque, quae in his culpabiles fuerint, ecclesiastico supponimus interdicto, . . .* (Wilkins. *Concilia* II, 221). This bull is in close connexion with previous prohibitions. In the general council of the Lateran III (1179), printed as c 4, Decretals Greg. IX (*Lib. Extra*) III, 49, the bishops and clergy had been still allowed to contribute voluntarily to a tax when the property of the laity was insufficient. The general council of the Lateran IV (1215), printed as c 7, Decret. Greg. IX (*Liber Extra*) III, 49, had amended: *Propter imprudentiam tamen quorundam Romanus pontifex consulatur.* Impositions of taxes without this consultation of the pope were to be void and punished with excommunication.

[81] For this and the events connected therewith see the full accounts in Stubbs, *Const. Hist.* II, 135 ff. c 14 § 180 and Hefele, *Konziliengeschichte* 2nd Ed. VI, 289 ff.

[82] Winchelsey's summons to the council of the southern province is to be found in Wilkins II, 219.

[83] Bartholomaeus de Cotton, *De Rege Edwardo I* (*Rer. Brit. Scr.* No. 16) 318.

[84] Barth. de Cotton, *l.c.* 318: *Ex quo homagium et juramentum pro baroniis vestris mihi praestitum non tenetis, nec ego teneor vobis in aliquo.*

[85] Summons in Palgrave (*Record Commission*), *Parliamentary Writs* I, 51.

[86] *Annales de Wigornia* (*Rer. Brit. Scr.* No. 36; *Annales Monastici*) IV, 530: *Et in aula regis Iohannes de Mettingham publice proclamavit, ne quis causas in curia regis religiosorum defenderet vel clericorum, sed laicorum causae procederent sicut prius; et quod religiosi et clerici fuerunt extra pacem et defensionem regiam, pronunciavit; et quod nullum breve transgressionis de cancellaria exiet pro religioso vel clerico qualicunque, quocunque modo gravati fuerint contra pacem. Tertio Kal. Februarii tale fuit regis consilium, quod praeciperet praescriptam duritiam fieri contra clerum.* Cf. Barth. de Cotton, *l.c.* 318, 319.

[87] Barth. de Cotton, *l.c.* 320.

the 12th the king ordered the confiscation of all fiefs in the hands of the clergy.[88] Individual bishops, abbots and some of the lower clergy now submitted and redeemed their confiscated lands by the payment of the amount of the tax which fell to their share; upon which the king again took them under his protection.[89] The clergy of the northern province had already yielded, and received on the 6th of February the assurance of royal grace.[90] Urged by Winchelsey, the king on the 7th of March authorized the provisional suspension of the measures directed against the clergy of the southern province. In the same month the synod of that province again assembled for deliberation, and again the grant of the tax was refused. The archbishop, however, declared that he left it open for each individual to come to a separate arrangement with the king.[91] On July the 14th

[88] *Edwardus, Dei gratia etc., vicecomiti Wygorniae salutem. Propter aliquas certas causas tibi praecipimus, quod omnia laica feoda totius cleri in balliva tua tam archiepiscoporum, episcoporum, et religiosorum quam aliorum clericorum quorumcunque, cujuscunque status existant, una cum bonis et catellis in eisdem inventis, sine dilatione capiatis in manum vestram, et ea salvo custodire faciatis; ita quod nec ipsi nec aliquis per ipsos ad ea manum imponant, donec aliquid inde praeceperimus; et hoc nullo modo omittatis. Teste meipso apud Ely, XII. die Februarii.* (Printed in *Annales de Wigornia; Rer. Brit. Scr.* No. 36; *Ann. Monastici* IV, 530, where, besides the proclamation of the 30th January mentioned in note 86, the following edict is adduced without specification of date: *Omnia mobilia sua perdent, nisi regis voluntatem fecerunt citra Pascha; et feoda annexa ecclesiis vel haereditate contingenda per annum in suis manibus rex tenebit; post hoc per breve eschaetae capitales domini feodum recuperabunt. Extunc tales nec ement nec vendent; nec praesumat aliquis talibus deservire, seu alias communicet quoquomodo. Et si resistant spoliatoribus, incarcerentur.* According to Barth. de Cotton, *l.c.* 321, the last cited edict appears to have been issued at the *colloquium* of Feb. 24th.)

[89] The king's letter of protection and a list of the persons to whom it was given is in Brady, *Hist. of England*, London 1685 ff., II, appendix No. 20; cf. also Nos. 21, 22.

[90] *Edwardus etc. Capitaneo Marinariorum et eisdem Marinariis ac omnibus Ballivis et fidelibus suis ad quos praesentes literae pervenerint, salutem. Cum Praelati et Clerus Ebor. et Karliolen. Civitatum et Diocesium prudenter intuentes inevitabiles necessitatis angustias quibus Ecclesiae suae et totum regnum Angliae occulata fide exponuntur, et subjacent his diebus, usque ad quintam partem Beneficiorum et bonorum suorum istius anni juxta taxationem nuper factam de Beneficiis Ecclesiasticis de quibus decima, ultimo in subsidium Terrae Sanctae concessa, data fuit, ordinaverint et constituerint se ponere ad defensionem suam, et Ecclesiarum suarum, et ad resistendum machinationibus et invasionibus hostium, . . . Nos ipsorum circumspectam providentiam commendantes, suscepimus in protectionem et defensionem nostram specialem, praedictos Praelatos et Clerum, et singulos eorundem homines, terras, res, redditus, et omnes possessiones suas. . . .* (Printed in Brady, *l.c.* II, appendix No. 19). According to Walter of Hemingburgh, *Chronicon* (ed. Hamilton) II, 118, the bishop of Durham, the third of the northern province, also submitted. The clergy evaded the papal prohibition by depositing their contributions in a church and leaving the king to remove them.

[91] *Flores Historiarum* (the so-called Matth. Westmonast.; *Rer. Brit. Scr.* No. 95) III, 101: . . . *Recesserunt itaque singuli oneratis suis conscientiis per archiepiscopum sic dicentem, 'Unusquisque suam animam salvet.'* *Ann. de Wigornia* (*Rer. Brit. Scr.* No. 36; *Ann. Monast.*) IV, 531: *Universos et singulos propriis conscientiis vos dimitto. Sed mea conscientia pro regis protectione vel alio colore dare pecuniam non permittit.*

Edward and the archbishop were reconciled, and on the 31st the former re-admitted the clergy to his protection.[92] The king's pliancy was caused by the war which had broken out with France and by the apprehension of troubles among the barons at home. As he was about to cross over to the continent in order to conduct the war in person, a part of the barons, ill-disposed for foreign service and seeking to profit by the quarrel with the church, had refused to accompany the army or to pay the taxes which the king in his need was levying without consent. But in spite of the prudence dictated by the difficulties of his position, Edward was not minded to surrender permanently the taxation of spiritualities. Upon his reconciliation with Winchelsey he immediately made a fresh demand for supplies. Winchelsey called the provincial synod for the 10th of August;[93] but on meeting the synod declared that the clergy, in consequence of the papal prohibition, could make no grant; they would, however, upon agreement with the king ask the pope's permission to accord one.[94] The king replied that, if they could make him no grant, he would take what was needful without it; and that he would give no assent to the seeking of papal allowance.[95] Accordingly, on the 20th of August, he issued an order for the collection of forced taxes upon the property of the clergy, excluding, however, the employment of compulsion in regard to income from purely ecclesiastical sources.[96] Two days later he embarked for the continent, leaving behind as regent his son, prince Edward, who, in October, found himself obliged, by the discontent exhibited in parliament, to con-

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[92] Protection printed in Brady, *l.c.* II, appendix No. 30.

[93] Summons in Wilkins, *Concilia* II, 226.

[94] *. . . ke il ne purreient rien graunter des biens de seinte eglise, pour les chartres renoueler sans conge le pape, . . . ; mes il espeyrent ke par bones resonnes, ke serreyent monstrez a le pape legerement, averunt le conge; et prient, . . . voillet soeffrier ke il puissent hastivement enveer par commun counseil de vous, e de lour, ou tut par eus, pour les choses avauntdites* (Wilkins, *Concilia* II, 226).

[95] Bartholomaeus de Cotton, *De Rege Edwardo I* (*Rer. Brit. Scr.* No. 16) 335.

[96] Palgrave (*Record Commission*), *Parliamentary Writs* I, 396: *Come li Roys par lordenaunce de Dieu eit resceu le governement del reaume par quoi il est tenuz au defens de mesme le reaume et de toutz ses souzmis clers et lais . . . Por le commun profit et defens devant ditz ad ordene qe pur ceo qe clercs par fet darmes ne se doivent deffendre, la tierce partie des biens temporeux de lan qe ore est des prelatz e des clerks et de totes persones de seinte eglise religieuses et autres seit levee pur la dite necessaire emprise* (the war with France) *fere et meintenir. Einsi qe rien ne soit leve par cele acheison des dimes meimes, ne grantz oblacions obvencions mortuaires, ne des biens assignez a la lumineire ou as ornementz de la eglise ou dautre biens purement esperitieux. Ne ren ne soit leve des clerks quy benefices ne valent plus de V. mars en totes chouses selonc la dreine taxacion. E entent le Roy qe les biens des clerks en leur lais fiez qui ne sount pas aportenauntz as eglises ne seient pas en ceste taxacion, mes courient en la taxacion des lays. E ausi entent ly Roys qe ceux qui voudront doner la quinte partie de toutz leur biens temporeux e espiriteux aportenauntz a leur benefices soient au quint. E de ceste prise qe ly Rois fera entent il si tost come il porra en bone manere fere le gre de ceux de quil avera pris selonc ceo quil devra fere en tele manere qil sen devront tenir apaez.*

cede redress of the principal grievances. The regent confirmed afresh the Magna Carta and approved some new articles, containing especially the proviso that thenceforth the more important taxes should not be levied on either clergy or laity without the common consent of all orders. These concessions of the regent were, on the 5th of November, ratified by king Edward.[97] Meanwhile the pope had addressed conciliatory letters on the 7th of February to the king of France,[98] on the 28th of February to the French clergy,[99] on the 31st of March to king Wenzeslaus,[100] and in a communication to the king of France dated the 22nd of July, 1297, had abandoned the necessity of previous papal approval in cases of urgency.[101] It

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[97] Printed in *Statutes of the Realm, Statutes* I, 123. The relevant parts of the deed of confirmation are:—

I. *Edward par la grace de Dieu, roy Dengleterre . . . Sachiez nous . . . aver grante pur nous et pur nos heirs, qe la grande chartre des franchises et la chartre de la forest les queles furent faites par commun assent de tut le roiaume en tens le rey Henry notre pere, seient tenuz en toutz leur pointz, sans nul blemishment . . .*

VI. *Et ausi avons grante pur nous e pur nos heirs as ercevesques, evesques, abbes e priurs, e as autres gentz de seinte eglise, et as contes et barons et a tote la communaute de la terre, qe mes pur nule busoigne tieu manere des aides, mises ne prises, de notre roiaume ne prendroms, fors qe par commun assent de tut le roiaume, et a commun profit de meisme le roiaume, sauve les ancienes aides et prises dues et custumees.*

The chronicler Walter of Hemingburgh gives, under the title *Articuli inserti in Magna Carta*, a Latin text, which contains not a few deviations from the French deed of confirmation. This Latin text is known under the name *Statutum de tallagio non concedendo* and is, in the preamble of the *Petition of Right*, 3 *Car. I* (1627) c 1 s 1 and in a decision of the judges (1637), erroneously designated an act. It certainly did not obtain the force of law. Whether the Latin text is a draft of the law or an inaccurate reproduction of it, is uncertain. As to the relations of the two texts see Stubbs, *Sel. Chart.* 492 ff. and *Const. Hist.* II, 147 ff. c 14 § 180.

[98] Letter of Boniface VIII to king Philip (Feb. 7th) in Baronius, *Annales*, year 1297, § 49 Ed. 1864–83, XXIII, 218: Voluntary gifts by the clergy are allowable, as also those depending on feudal obligation and the rights of the crown. Should there be danger in delay the assent of the pope need not be obtained.

[99] Letter of Boniface VIII to the clergy of France (*Ann. de Wigornia; Rer. Brit. Scr.* No. 36; *Annales Monastici* IV, 531 without date. The same fuller and with date 28 Feb., Baronius, *Annales* year 1297, §§ 43–45, Ed. cited XXIII, 216 and in *Hist. Papers from North. Reg.* [*Rer. Brit. Scr.* No. 61] p. 127): *Licet enim Constitutionem illam ediderimus pro ecclesiastica libertate, non tamen fuit nostrae mentis intentio ipsi regi aliisve principibus saecularibus in tam arcte necessitatis articulo (praecipue ubi ab extrinsecis injusta timetur invasio, et ab intrinsecis ejusdem regni subversio formidatur, ac etiam praelatorum, ecclesiarum et personarum ecclesiasticarum evidens periculum imminet), viam subventionis excludi, quominus ipsi praelati ecclesiae et ecclesiasticae personae libero arbitrio ac sponte de nostra licentia pro communi defensionis auxilio, in quo proprium interesse cujuslibet conspicitur, principibus ac sibi ipsis provideant juxta suarum modulum facultatum.* In this bull the pope returns to the position of Lateran council] IV. (above, note 80). He requires in particular, as before, papal approval even in urgent cases.

[100] Baronius, *l.c.* year 1297, § 51, XXIII, 219: *sponte liberoque arbitrio de licentia nostra.*

[101] Printed in Prynne, *Records* III, 725 and in Pithou, *Libertés de l'Eglise Gallicane* Ed. 1639 II, 1089: "in case danger threatens the realm, *inconsulto etiam Romano Pontifice.*"

was probably with a knowledge of these papal decisions that both convocations in November, 1297, granted taxes upon spiritualities without any renewed demand from the king.[102]

But the dispute did not end here. In principle the pope, and with him the English clergy, adhered to the view that papal consent was requisite for every tax upon church property. Once more, at the parliament of Lincoln (1301), the clergy sought to procure legal recognition of their theory. The temporal magnates supported the contention; the king repudiated it.[103] From this time the quarrel whether spiritualities were or were not taxable gradually ceased. In point of fact, grants of church taxes were made uninterruptedly. Frequently the pope's allowance was requested, in other cases it was dispensed with. The opposition of the clergy to the granting of taxes in general softened down to an opposition to the granting of church taxes in the national council. With that limitation, the dispute went on for a considerable time. It was not before the middle of the fourteenth century that the principle defended by the clergy, that competence to grant taxes upon church property resided solely in the provincial synods, not in parliament, was put beyond question.[104] By the establishment of this view the clergy had gained a material increase of power for their provincial synods, but only at the cost of the permanent exclusion of the lower clergy from the national council.[105]

Edward II failed to govern with the same vigour as his predecessor had shown. Instances of the filling of English church offices, including bishoprics, by the pope were multiplied, the right so claimed being known as that of provision. In accordance with the resolutions of the general council of Vienne (1311) the templars were suppressed in England as elsewhere, and their possessions transferred by legal enactment to the order of saint John.[106] Of legislation which was to exercise lasting influence upon the relation of church to state there is none to be mentioned belonging to this time except the so-called *Statutum Articuli cleri*.[107] It contains a demarcation of the competence of secular

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[102] Stubbs, *Const. Hist.* II, 147 c 14 § 180. Boniface VIII, by bull of 12th March, 1301 (*Hist. Papers from Northern Registers, Rer. Brit. Scr.* No. 61; p. 147) declared that he left to the king what the latter had collected through *impositiones et exactiones illicitas* from the clergy and freed him from all excommunications incurred in consequence of such exactions.

[103] Petition of prelates and temporal magnates and king's answer (Palgrave, *Parliament. Writs* I, 105):—

E par ceste choses suzdites ne pount ne osent pas les Prelatz de Seinte Eglise assentir Ke contribucion seit fete de lur biens ne de biens de la clergie en contre le defens le Apostoille.

Non placuit Regi set communitas procerum approbavit.

[104] Compare Stubbs, *Const. Hist.* III, 349 c 19 § 396.

[105] Compare § 21.

[106] 17 *Ed. II* st. 2 (1323/4) *De Terris Templariorum.* It is observed therein that their possessions would, without the statute, have fallen by escheat to the several lords of the fees.

[107] 9 *Ed. II* st. 1 (1315/6). This is a royal patent (24th Nov. 1316, 10 *Ed. II*) issued with consent of the *consilium*, containing the various petitions of the clergy and the king's answer to each petition. (Printed in *Statutes of the*

and ecclesiastical courts, couched almost in the terms of the *Circumspecte agatis*, which is, as we have seen, probably assignable to Edward I;[108] besides this, it redresses a number of insignificant church grievances, without, however, sacrificing essential prerogatives of the state.

Edward III in like manner remained, for the most part, at peace with the national church, whose assistance he needed to enable him to carry on his wars with the king of France.[109] In the early

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Realm I, 171 and in *Hist. Papers from the Northern Registers; Rer. Brit. Scr.* No. 61, pp. 253 ff. The answers contained therein had already been read at the parliament of Lincoln, 9 *Ed. II*). cc 1–6 relate to the jurisdiction of the ecclesiastical courts *re* causes; c 7 to excommunications; c 8 to competence *re* clerks employed in the exchequer; c 9 to the levying of distress on church property (the answer to the 12th art. of articles of 1279–85 is almost identical in language, *Hist. Papers from North. Registers*, p. 75); c 10 to the right of asylum; c 11 to corodies, resort and the like; c 12 to excommunication of the king's tenants; c 13 to the examination of persons presented by the king to a benefice; c 14 to free election to church dignities; cc 15 and 16 to the amenability of clerks to the courts. The relation of the statute to previous similar answers to ecclesiastical complaints is mentioned in the introduction to the patent: *Rex omnibus, ad quos etc. Salutem. Sciatis quod cum dudum temporibus progenitorum nostrorum quondam Regum Anglie, in diversis parliamentis suis, et similiter postquam regni nostri gubernacula suscepimus in parliamentis nostris, per prelatos et clerum regni nostri, plures articuli continentes gravamina aliqua ecclesie Anglicane et ipsis prelatis et clero illata, ut in eisdem asserebatur, porrecti fuissent, et cum instancia supplicatum, ut inde apponeretur remedium opportunum: Ac nuper in parliamento nostro apud Lincoln. anno regni nostri nono, articulos subscriptos, et quasdam responsiones ad aliquos eorum prius factas, coram consilio nostro recitari, ac quasdam responsiones corrigi, et ceteris* (North. Reg.: *certis*) *articulis subscriptis per nos et dictum consilium nostrum fecerimus responderi; quorum quidem articulorum et responsionum tenores subsequuntur in hunc modum.*

[108] Compare above, note 71.

[109] With the object of redressing minor grievances of the clergy and further limiting the rights as against each other of temporal and ecclesiastical authorities *in the land* the following laws were enacted under Edward III:—

1 *Ed. III* (1326/7) st. 2. c 2 concerns abuses connected with the king's taking into his hands the temporalities of prelates; c 10, pensions, corodies, etc.; c 11, prohibition of certain suits for defamation in spiritual courts (cf. § 60, note 76).

14 *Ed. III* (1340) st. 4. c 1 lays down that no spiritual person's goods shall be purveyed for the king without the owner's consent; c 2 restricts the king from presenting to benefices already occupied; c 3 ordains that prelates' temporalities are not to be taken in hand by the king without good cause or judgment given; cc 4, 5 relate to the administration of the temporalities of bishops during vacancy.

18 *Ed. III* (1344) st. 3. c 1 relates to impeachment of archbishops or bishops before the king's justices; c 2 lays down that bigamy shall be tried by the ordinary (cf. § 60, n. 33); c 3 relieves clergy who purchase land in mortmain; c 4 concerns purveyances, c 5, prohibitions; c 6 forbids enquiries of temporal justices into the proceedings of spiritual judges; c 7 relates to procedure in questions of tithe.

25 *Ed. III* (1351/2) st. 6. *Ordinatio pro Clero.* cc 1–3 relate to the king's encroachments upon others' rights of presentation; cc 4, 5 to the amenability of clerks in cases of treason or felony; c 6 orders that prelates' temporalities are not to be seized for contempt, but a fine paid; c 7 concerns advowson; c 8 relates to the jurisdiction of ecclesiastical courts *re* causes; c 9 requires indictments of ordinaries or their officers for extortion or oppression to be definite.

part of the reign friction was avoided owing to the fact that from 1330 to 1340 John Stratford, who became archbishop of Canterbury in 1333, and his brother Robert held the great seal alternately with only two short interruptions. Afterwards disputes of a slight and temporary character occurred, and towards the end of the reign the court party under John of Gaunt sought touch with Wycliffe and the reformers as against the party of the prelates.

In the lower house of parliament, whose rights reached their full development under Edward III, a power had arisen which necessarily regarded every privilege of the clergy as a limitation of its own influence and which accordingly kept jealous watch to hinder the extension of such privileges. According to legal usage as hitherto prevailing, petitions of the clergy assembled in their convocations could be turned into universally binding laws by the mere fact of their receiving the king's assent. Against this the commons protested. Upon their petition Edward III in 1377 approved that the lower house should be bound by no law and by no ordinance made without its consent and with the concurrence of the clergy only.[110] The recognition of this principle hampered the clergy henceforth considerably in compelling an alteration in parliamentary laws by simply exercising pressure on the government. As a rule all that they could now obtain in this way was a mitigation for a time of the severity with which laws were administered.

In relation to the pope, the strengthened position of the house of commons likewise stood the civil power in good stead. Even at the beginning of the reign the statute of Carlisle, made under Edward I, was repeatedly confirmed.[111] Later, proceedings against papal encroachments in the matter of appointing to benefices and against the financial claims of the pope, were rendered more easy by the circumstance that new wars with France broke out and that, consequently, every service done to the pope at Avignon, who was naturally under French influence, was inevitably regarded as in aid of the enemy. After certain preparatory measures,[112] in 1351 was passed the first law (*Statutum de provisoribus*) that in unmistakable terms and with strict penalties for breach opposes the usurpations of Rome in regard to ecclesiastical appointments.[113] In every single case where the conditions under which king John had conceded free election by the chapters are violated, the king is to have free presentation; as also if the pope encroaches on other of the king's rights of presentation. If the pope infringes the rights of

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[110] Compare § 14, note 8.

[111] 4 *Ed. III* (1330) c 6: *Item est acorde qe lestatut nadgairs fait et afferme a Kardoil, cest assaver, qe les Religiouses ne facent apport outre meer, soit meyntenu garde, et tenu, en toutz pointz.*—5 *Ed. III* (1331) c 3: *Ensement est acorde et establi qe un estatut fait a Kardoil, en temps meisme le Roi lael* [= *l'aïeul*], *en quel est contenuz qe gentz de Religion ne facent apport hors du roialme, soit tenuz, gardez, et maintenuz en touz pointz.* Cf. above, note 70

[112] The impetus was given by a petition of the lower house of parliament in 1343. The several measures which followed up to 1351 are brought together in Stubbs, *Const. Hist.* II, 413 c 16 § 259; III, 339 c 19 § 392.

[113] 25 *Ed. III* (1350/1) st. 4, printed in appendix VIII.

presentation which lie in ecclesiastical persons or bodies, then may these nevertheless present, if they venture to do so. If they do not present or if their presentee does not obtain possession, the king shall present for that turn. If the pope disturbs lay patrons in their rights, his disposal of the benefice is likewise to be ignored. Should the lay patron not present within six months, the presentation passes to the bishop, and should the bishop not present in a further month, to the king.

In the year 1353 another important law was passed. It is directed against appeal to the pope in cases cognizable by the king's court or in which the king's court has given judgment. Here again, offenders are threatened with the severest penalties.[114] [115]

The higher clergy had taken no part in procuring the enactment of these two laws.[116] In a third important step against the papal see they co-operated with the laity. When in 1366 the pope, basing his claim on John's submission, demanded the feudal tribute—it had been last paid in 1333—parliament declared that that submission, owing to want of assent on the part of the barons, was void, and it refused payment.[117] From that time forth the popes ceased

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[114] 27 *Ed. III* (1353) st. 1 c 1, *Statutum contra adnullatores Judiciorum Curiae Regis.* The statute is often designated 'the first praemunire-act.' The writ *praemunire facias* is not mentioned by name in it. The essential provision of the law is printed in § 23, note 11.

[115] Both laws were confirmed and supplemented by 38 *Ed. III* (1363/4) st. 2.

[116] Compare § 21, note 31.

[117] *Rotuli Parl.* II, 290: *Lour disoit* (the chancellor to the parliament), *Coment le Roi avoit entendu qe le Pape, par force d'un fait quel il dit qe le Roi Johan fesoit au Pape, de lui faire Homage pur le Roialme d'Engleterre et la Terre d'Irlande, et qe par cause du dit Homage q'il deveroit paier chescun an perpetuelment Mill' Marcs, est en volunte de faire Proces devers le Roi et son Roialme pur le dit Service et Cens recoverir. De qoi le Roi pria as ditz Prelatz, Ducs, Countes et Barons lour avys et bon conseil, et ce q'il en ferroit en cas qe le Pape vorroit proceder devers lui ou son dit Roialme pur celle cause. Et les Prelatz requeroient au Roi q'ils se purroient sur ce par eux soul aviser, et respondre lendemain. Queux Prelatz le dit lendemain adeprimes par eux mesmes, et puis les autres Ducs, Countes, Barons, et Grantz respondirent, et disoient, Qe le dit Roi Johan ne nul autre purra mettre lui ne son Roialme ne son Poeple en tiele subjection, saunz Assent et accorde de eux. Et les Communes sur ce demandez et avisez, respondirent en mesme la manere. Sur qoi feust ordeine et assentu par commune Assent en manere q'ensuit: . . . Queux Prelatz, Ducs, Countes, Barons et Communes, eu sur ce plein deliberation, responderent et disoient d'une accorde, Que le dit Roi Johan ne nul autre purra mettre lui ne son Roialme ne son Poeple en tiele subjection saunz Assent de eux, et come piert par plusours Evidences qe si ce feust fait ce feust fait saunz lour Assent, et encontre son serment en sa Coronation. Et outre ce, les Ducs, Countes, Barons, Grantz et Communes accorderent et granterent, qe en cas qe le Pape se afforceroit ou rien attempteroit par Proces ou en autre manere de fait, de constreindre le Roi ou ses Subgitz de perfaire ce qe est dit q'il voet clamer celle partie, q'ils resistront et contreesterront ove toute leur peussance.*—According to the deed John's submission had been made *communi consilio baronum nostrorum.* That the transfer of the kingdom to the pope by John was void owing to alleged defective assent of the barons, had already been urged by Philip of France to the legate Gualo, Apr. 1216 (Stubbs, *Const. Hist.* II, 13 c 14 § 169).

to claim the tribute. That England was, in temporal matters, independent of Rome, was never afterwards seriously questioned.[118]

In the last years of his reign Edward III, after negotiations which had been carried on in 1374–75 at Bruges, received assurances from the pope[119] as to the removal of the principal grievances complained of. But the promises made were not long observed.[120]

Richard II (1377–99) was a minor when he became king. In the year 1381 rebellions broke out in many parts of England. The movement for the reform of the church played a certain part in many of these risings. It is probably in connexion therewith that there was issued in 1382 the first secular law against lollard heretics. The house of commons, however, maintained the invalidity of that law, because it had been promulgated without their assent.[121]

Soon after the king had taken the government into his own hands (1389), Edward III's legislation against the pope was renewed and in some respects supplemented. (Thus we have a statute of provisors, 13 *Ric. II* [1389/90] st. 2 cc 2, 3, and the statute of praemunire, *par excellence* so called, 16 *Ric. II* [1392/3] c 5.)[122]

The independence of the English crown was once more solemnly affirmed, in that at the king's deposition one of the offences charged against him was, that he had sought the confirmation of the pope for the statutes enacted in his last parliament.[123]

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[118] Reference to the feudal relation between them was made by the pope to Elizabeth.

[119] Bulls of the pope, 1st Sept. 1375, in Rymer, *Foedera* 4th Ed. III, 1037: (1) Those who are in possession in virtue of royal presentations and collations shall remain in possession. (2) The same holds good in the case of certain specially named persons who rely on the king's grant and against whom other claimants have suits pending at the papal court. (3) Urban V had directed the drawing up of a register of the value of the various benefices and their circumstances in regard to taxation; anyone who did not deliver the particulars required for the register was to be removed from his benefice, which was reserved for the pope to refill. This general reservation, as well as all other special reservations ordered by Urban and other popes, in so far as the popes had not yet made use of the same, were annulled. Present holders of such-like benefices were confirmed in possession. (4) The occupants of benefices, confirmed in possession under 1–3, are allowed to keep the income for the interval; the pope renounces his claim to annates which might have been payable in respect of these benefices. (5) Owing to difficulty of access to Rome on account of the war between England and France, the admissibility of citing Englishmen to Rome is temporarily restricted. (6) The English archbishops are commissioned to require cardinals who have benefices in England to repair the buildings thereof.—See Stubbs, *Const. Hist.* II, 447, note 3 c 16 § 261.

[120] Compare the numerous complaints of the 'good parliament,' 1376, against papal abuses, *Rotuli Parliamentorum* II, 337 ff.; for example, c 98: *Item fait a penser qe Dieux ad commys ses ouweles a nostre Seint Pier le Pape, a pasturer et non pas a tounder.*

[121] Cf. § 19, notes 5 and 7.

[122] The most important provisions of these laws are to be found in § 23, note 11.

[123] Printed § 28, note 1.

It is not of importance for the history of the constitution of the church that we should trace the relations of church and state during the reigns between Richard II and the reformation.

As early as the days of Edward III a resting place had been reached in the struggle between the state and the *national* church. If afterwards dissensions occur, the occasion of them is generally to be found in personal hostilities between the spiritual and the temporal rulers for the time being. The house of commons held the church in check. The latter had, in practice, to acquiesce in the principle that the law of parliament must, in the last resort, decide upon the competence of spiritual as well as of temporal authorities. The mortmain legislation was kept permanently in force. The personal exemption of the clergy from secular jurisdiction continued within the limits in which it had hitherto been confined. It was only under Henry VII (1485–1509) that this privilege began to be curtailed. The prosecution of heretics was regulated by state enactment. In 1382 the commons, as we have seen, had protested against the validity of the lollard law then issued. The first generally recognized law against heretics dates from 1401 (2 *Hen. IV* c 15), its passing being rendered possible by the political changes in connexion with the deposition of Richard II. Another and harsher law against heretics was made in the reign of Henry V after the suppression of a lollards' rising. In these laws far-reaching powers were conferred upon the bishops, and it was made the duty of the royal officials to give effect, without further enquiry, to the judgments of the church. Nevertheless the clergy became in this way accustomed to regard secular forms of law as regulating procedure against heretics. No prosecution for heresy took place from this time in other than legal form.

Moreover, in respect of relations with the *pope*, the statutes of provisors and praemunire of Edward III and Richard II had established a sure basis in English legislation. The popes, it is true, paid no regard to these statutes and constantly acted in breach of them; papal influence was so strong that actual and continuous execution of their articles was impossible. Not only did the kings by dispensations and licences meet the wishes of the pope in individual cases and even beg provisions of him in favour of their own candidates, but parliament also several times sanctioned the temporary suspension of the laws.[124] But suspension was not final repeal; and the statutes remained in force, nay, were gradually elaborated by new enactments. Thus, in particular, the king's right to grant licences or pardons was somewhat restricted.[125] The

[124] Compare, for example, Stubbs, *Const. Hist.* II, 612 c 17 § 291; III, 34, 260 c 18 §§ 306, 367.

[125] The following are the acts which belong here: 25 *Ed. III* st. 4 (1350/1); 25 *Ed. III* st. 5 (1351/2) c 22; 38 *Ed. III* (1363/4) st. 2 cc 1–4; [against provisions through others than the recognized pope, Urban VI: 2 *Ric. II* (1378/9) st. 1 c 7]; 3 *Ric. II* (1379/80) c 3; 7 *Ric. II* (1383) c 12; [cf. also 10 *Ric. II* (1386)]; 12 *Ric. II* (1388) c 15; 13 *Ric. II* (1389/90) st. 2 cc 2, 3; 16 *Ric. II* (1392/3) c 5; 2 *Hen. IV* (1400/1) c 3; 7 *Hen. IV* (1405/6) c 8; 9 *Hen. IV* (1407) c 8; [1 *Hen. V* (1413) c 7]; 4 *Hen. V* (1415/6) st. 1 c 4.

laws were frequently put into effect and supplied a welcome means of resisting the worst encroachments of the pope. Martin V (1417–31) made a futile attempt to obtain their total repeal. By his desire archbishop Chichele with the bishops appeared in the lower house of parliament to propose a change in the statutes of provisors and praemunire.[126] So far from listening to his appeal, the commons begged the king to defend the archbishop of Canterbury from calumny and impending attacks in Rome.

Apart from the matter of encroachment upon foreign rights of presentation, repeated efforts were made to induce the pope to remove other abuses which attached to the system of Romish dispensations. Promises were several times made; so especially in the concordat entered into at the general council of Constance between the pope and the representatives of the English nation.[127] But the concessions then made, like those of a similar kind at earlier dates, were expressed in such elastic terms that they brought no permanent relief. With the questions here involved, questions affecting the internal administration of the church rather than its relation to the state, state legislation meddled but little. We must, however, mention as exceptions the statutes dealing with appropria-

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[126] The pope's letters, the answers and a report upon the appearance of the bishops in the lower house of parliament (Jan. 1428) are printed in Wilkins, *Conc.* III, 471 ff. The lower house begged that the king, by his ambassadors in Rome and by a letter to the pope, would protect the archbishop of Canterbury against the calumnies brought against him and defend the rights of the archbishop and church of Canterbury in the proceedings pending at Rome. The king assented (6 *Hen. VI* [1427] *Rot. Parl.* IV, 322).

[127] The concordat as drawn up by the Roman chancery, 17th April, 1419, is printed in Wilkins, *Concilia* III, 391. It is laid down therein:—

1. The cardinals shall not be too numerous, shall be taken impartially from all nations with the assent of a majority of the college of cardinals.
2. As there are in England too many places of absolution approved by the pope, and offerings are thus withdrawn from the parish churches, the bishops are to make report to the pope, in order that he may revoke superfluous licences.

3 and 4. For the future appropriations are only to be made with the assent of the bishop. Under certain circumstances existing appropriations (*uniones, incorporationes, appropriationes et consolidationes*) may be done away with. *Vicarii perpetui* are in that case to be appointed.

5. All *privilegia de utendo pontificalibus* (*mitris, sandaliis*, etc.) granted since the death of pope Gregory XI (1378) are revoked.
6. *Pluralitates* are henceforth only to be granted *personis nobilibus* or to men of distinguished learning.
7. Holders of benefices for from one to seven years or longer have been without orders. This is not to be, *si tamen . . . sint alias habiles ad ordines suscipiendos.*
8. Dispensations by the pope from residence, or to archdeacons to make their visitations by deputy, are not in future to be made *absque causa rationabili et legitima in litteris dispensationum exprimenda.*
9. *Litterae facultatum* to monks to hold church benefices with or without care of souls are not to be granted.
10. Englishmen, as well as others, are to be promoted to office in the Roman curia.
11. The pope will issue a bull upon the matters above mentioned.

tions [128] and with the penalties for the purchasing of bulls to be discharged of tithes.[129] A large number of abuses in church administration, founded on the purchase of papal dispensations, still survived. It was with these abuses that Henry VIII began in his first reforming laws.

§ 5.

b. Development of the church constitution internally.

I. Archbishops. At the commencement of this period the archbishops of Canterbury raised a claim to receive the oath of obedience from the archbishops of York. But the claim was not permanently acknowledged, and England remained divided into two ecclesiastical provinces, at the heads of which were archbishops enjoying equal rights. In 1126 the archbishop of Canterbury accepted the position of a permanent legate of the Roman pontiff. By so doing he sacrificed his independence in one direction to gain authority in another. From the middle of the fourteenth century the archbishops of York were likewise almost always papal legates. But the district subjected to the archbishop of Canterbury being considerably superior in area and population, he was thus practically assured of a more prominent position than the archbishop of York enjoyed. Moreover, from the middle of the fourteenth century, the latter admitted the precedence of his brother of Canterbury.[1]

II. Bishops and their officers. Within the first two centuries after the Norman conquest the larger number of the bishoprics were divided each into several archdeaconries.[2] The effect of this was to lower the position of the rural deans, and the archdeacons appropriated the greater part of the privileges which had previously belonged to them.[3] But further, some of the rights of supervision which had hitherto been the bishops' now passed to the archdeacons. The court of the archdeaconry became a special court of lowest instance, detached from the episcopal court. The holding of the latter fell to a new functionary, called the episcopal 'official.'[4] Moreover, in exercising the *potestas ordinis* the bishop was often relieved owing to the association with him, from the thirteenth century, of *episcopi suffraganei, episcopi in partibus infidelium*.[5]

III. Parish priests. The position of the parish priests suffered from the abuse of appropriations.[6] By the fourteenth century about a third of all English parishes were appropriated. Hence the revenues applicable to the actual care of souls were much diminished; the natural tendency of this was to cause the clergy who came into most frequent contact with the people to remain

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[128] 15 *Ric. II* (1391) c 6; 4 *Hen. IV* (1402) c 12.
[129] 2 *Hen. IV* (1400/1) c 4; 7 *Hen. IV* (1405/6) c 6.
[1] With this paragraph compare § 34. [2] Cf. § 42, notes 4 and 5.
[3] Cf. § 43, note 9. [4] Cf. § 38. [5] Cf. § 39. [6] Cf. § 44, note 11.

at a low stage of culture. It was not until the end of the fourteenth century that the development of the system was checked.

IV. Church councils. The provincial synods, at the end of the last and the beginning of the present period hardly to be distinguished from secular councils, awoke to new and independent life. In ever-increasing degree the bishops consulted representatives of their subordinate clergy, whilst, at the same time, the laity ceased to take part in the deliberations. At the end of the thirteenth century elected representatives of the parochial clergy were summoned; it became an established rule that definite classes of church officials must be summoned in person, and that, for other classes, a definite number of representatives should be called; every provincial synod resolved itself into an upper and a lower house. These provincial councils, whether in consequence of their fusion with the representation of the clergy in the national council or without any such intervening stage, obtained the right of granting taxes in respect of church property. In connexion therewith grew up a right to the king to require from the archbishop the summoning of the provincial synod at any time. But the archbishop also retained the right, to which he had urged his claim since the end of the twelfth century, of calling such a council even without the king's consent.[7]

Whilst then the ecclesiastical synods of the province, which now were called convocations, thus came to be an important factor in the constitution of the state and attained to efficiency and far-reaching influence, national church councils, owing to the jealousy of the archbishops, met but seldom, and almost exclusively under the presidency of pontifical legates. They did not become a permanently operative part of the church organism.

V. Monks. The struggle between the regular clergy and the monks still continued. In numerous instances the monasteries[7a] secured, to a greater or less extent, immunity from the bishop's supervision. Cases of exemption from any form of episcopal interference had probably occurred as early as Anglo-Saxon times.[8] After the conquest the first monasteries wholly free from such control were those of the cistercians, who settled in England in 1128. By degrees a considerable number of abbots of larger monasteries received the external signs (the mitre etc.) of the episcopal dignity. The first reported case in England of such a bestowal of episcopal ornaments by the pope took place in 1063, the recipient being the abbot of St. Augustine's in Canterbury; but the abbots are said not to have used

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[7] On the whole paragraph compare § 54.

[7a] The position of the various monasteries can be seen in Ch. H. Pearson, *Historical Maps*, 2nd Ed. London, 1870, p. 58. On pp. 67 ff. see lists of the monasteries destroyed or abandoned by 1066, of the houses of canons and of benedictin monks existent in 1066 and of the number of new foundations under the several reigns from 1066 to 1377. A list of the monasteries, colleges etc. founded before 1066 is given in Walter de Gray Birch, *Fasti Monastici*.

[8] Cf. § 2, note 9.

those ornaments after the conquest.[8a] After this another bestowal first happened under pope Hadrian IV (1154–59), the ornaments being conferred on the abbot of St. Alban's.[9]

The appearance of the mendicant orders in England during the first half of the twelfth century led to an increase in the strength of monasticism. As the monks always willingly submitted themselves to the pope, they were secure of his support in their endeavour to break through the regular constitution of the church.

C. FROM THE REFORMATION TO THE PRESENT DAY.

§ 6.

a. The reformation.[a]

The peculiar characteristic of the course of the reformation in England is that the movement was for long, that is, until the death of Henry VIII, confined, for the most part, to changes in the constitution of the church, the old doctrines being treated with all possible forbearance. The aim of the struggle which the king undertook was the deliverance of the state from the influence of a foreigner. In such an effort he found, as other kings had done before, the assured support of the national council; and under pressure from him, the highest church officers in the land also arrayed themselves at his side. During the conduct of the struggle assistance was derived from the party which was desirous of dogmatic changes, a party which since the lollard controversies had never been wholly extinct, and to which the reformation in Germany had given a forward impetus and increased authority. This party, even in Henry's reign, succeeded in introducing certain alterations in doctrine and in the externals of divine service. But Henry, in this respect, was a restraining rather than a propulsive force; to far-reaching innovations he offered the most vigorous resistance. It was not until the regency during the minority of Edward VI that the reformation in England was on its doctrinal side accomplished.

The outward and apparent cause of the outbreak of the quarrel

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[8a] Goscelin, *Hist. Transl. S. Augustini* lib. II c 5 (printed in Migne, *Patrol. Cursus*, vol. 155 p. 33. Goscelin died probably in 1098; Hardy, *Rer. Brit. Scr.* No. 26, II, 83); Thorn, *Chron.* (ed. Twysden) 1785, 1824.

[9] Matthaeus Paris., *Vitae* 23 *Abbatum St. Albani* (ed. Wats. London 1639) p. 73: *Duo namque maxima privilegia adepti sunt. Primum de pontificalibus ornamentis;* . . . For fuller information see *l.c.*, or in *Gesta Abbatum Mon. St. Albani* (*Rer. Brit. Scr.* No. 28) V, 124–158, drawn from Matthaeus Paris. The documents, regarding the definite agreement (1163) between the abbot of St. Alban's and the bishop of Lincoln are printed in Dugdale, *Monasticon*, Edition 1817–30, VI, 1276 and in Roger de Wendover, *Chron.* (*Rer. Brit. Scr.* No. 84) I, 22.

[a] Gneist, *Engl. Verfassungsgesch.* § 30.—Perry, *Hist. of Engl. Ch.* Vol. II cc 1–16.—Ranke, *Englische Geschichte* Book II cc 3–8 Book III c 1. Compare also appendix XIV, II, 3 *a, c.*

between Henry VIII and the papacy was the king's desire, issuing from political considerations,[1] to be divorced from his wife Catherine of Arragon. To effect this there were needed, according to the view till then prevailing, proceedings before a papal court. These proceedings were begun. But the pope, likewise for political reasons,[2] sought to postpone a decision as long as possible, and gradually adopted an attitude of decided refusal.[3] Therewith was connected in England the fall (1529) of Wolsey, hitherto first minister of the crown, who, combining in himself the offices of royal chancellor, archbishop of York, papal legate and cardinal, had for many years controlled the higher administration of church and state.[4] The first statute of this period that, if only in a limited sphere, is levelled against papal influence, 21 *Hen. VIII* (1529) c 13,[5] followed close upon Wolsey's disgrace. The enactment lays down definite principles as to pluralities and as to residence, and declares the obtaining of papal dispensations to have pluralities or to be discharged of residence an offence punishable with a moderate fine.[6] In order to make the convocations pliant, the king threatened the whole of the clergy with prosecution for breach of the praemunire acts. After prolonged discussion both convocations bought pardon by the payment of heavy sums and by acknowledging that the king was 'the single protector, the sole and sovereign lord, and in so far as the law of Christ allows, the supreme head' of the English clergy (1531).[7]

Shortly after this, perhaps convocation itself proceeded to action against the pope. A petition to the king purporting to be from convocation—the date is not precisely established—begged that he would take steps to limit the heavy dues payable to the pope upon the attainment of archbishoprics and bishoprics; if the pope did not concur, they prayed that the obedience of the king and his people

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[1] His affection for Anne Boleyn was a later and additional inducement. Ranke, *Engl. Gesch.* 2nd Ed. Vol. I pp. 162 ff.

[2] Ranke, *l.c.* pp. 170 ff. The pope at the outset expressed himself disposed to grant a dispensation.

[3] By the king's wish the pope had commissioned Campeggio and Wolsey to determine the issue in England. But on Catherine's appeal he revoked the case to Rome, and on July 23rd, 1529, the two cardinals adjourned the court. From that time Henry's hostility to Rome was pronounced.

[4] Wolsey's removal was due nominally to his condemnation for breach of the praemunire statutes, really to the fact that he was suspected of not urging the king's case at Rome with sufficient zeal.

[5] *An Acte that no spirituall persons shall take to ferme of the Kynge or any other person any Londes or Tenementes for terme of life, lyves, yeares or at will etc. And for pluralities of Benefices; and for Residence.*

[6] ss 9, 16.

[7] For the text of their declarations see § 28, note 2.—Their pardon was expressed in the acts:—

22 *Hen. VIII* (1530/1) c 15 *An Acte concernyng the pardon to the Kyngs Spirituall Subgectes of the Provynces of Canterbury for the Premunyre.*

22 *Hen. VIII* (1530/1) c 16 *An Acte concernyng the pardon graunted to the Kynges Temporall Subgectes for the Premunyre.*

23 *Hen. VIII* (1531/2) c 19 *An Acte concernyng the Kynges gracyous pardon of premunyre graunted unto his spirituall Subjectes of the provynce of York.*

might be by law withdrawn from the see of Rome.[8] The act 23 *Hen. VIII* (1531/2) c 20 follows the lines of the petition in question. It ordains that all payments to Rome upon preferment to any archbishopric or bishopric, except five per cent. of the whole yearly value, shall utterly cease, and that the making of them shall be punishable by forfeiture. If the pope owing to non-payment refuses or delays bulls apostolic or other things requisite, then shall he that is named for the bishopric or archbishopric be consecrated without further formalities—as was in old time customary—by the archbishop or (if for an archbishopric) by two bishops appointed by the king. The renunciation of obedience is not threatened; on the contrary the whole act is conceived in a spirit of moderation; moreover, power is reserved to the king to negotiate with the pope and to determine within a definite time whether and to what extent the statute shall become operative.[9]

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[8] *It may please the King's most noble grace . . . , First, to cause the said unjust exactions of annates to cease, and to be foredoen for ever by act of this his grace's high court of parliament. And in case the pope wold make any process against this realm for the attaining those annates, or else wol retain bishops bull 'till the annates be payd, forasmuch as the exaction of the said annates is against the law of God, and the pope's own lawes, forbidding the buying or selling of spiritual gifts or promotions; and forasmuch as al christen men be more bound to obey God, then any man; and forasmuch as St. Paul willeth us to withdraw ourselves from al such, who walk inordinately; it may please the King's most noble grace to ordain in this present parliament, that then the obedience of him and the people be withdrawn from the see of Rome; as in like cases the French King withdrew his obedience of him and his subjects from pope Benedict the XIIIth of that name; and arrested by authority of his parliament al such annates, as it appeareth by good writing ready to be shewed.* (Strype, *Eccles. Memorials*, Edition 1822, vol. I pt. 2 p. 158 nu. 41 after the manuscript Cleopatra E. 6 p. 263; after Strype in Wilkins, *Concilia* III, 760.) Wilkins places this petition under the year 25 *Hen. VIII* (22 April 1533–21 April 1534). But as its contents point to the fact that no law against the payment of annates had then been promulgated, the date at all events does not appear to be suitable.—The bill was laid before parliament between 14th and 28th February, 1532, and passed on the 19th March in the same year; all the bishops and two abbots are said to have voted against it (Reports of Chapuys to Charles V, abstract in *Letters etc. of the reign of Henry VIII*, vol. V, ed. Gairdner, No. 832 [805], 879). Stubbs, appendix IV p. 88 to the *Report of the Ecclesiastical Courts Commission* 1883, Parliamentary Reports vol. XXIV alludes to the petition under date of February, 1532.

[9] 23 *Hen. VIII* (1531/2) c 20 *An Acte concernyng restraynt of payment of Annates to the See of Rome.*

s 1: . . . *Annates, otherwise called furst fruytes . . . heretofore have been taken of every Archebysshoppriche or Byssoppriche within this Realme by restraint of the Popes Bulles for confirmacions eleccions admyssions postulacions provisions collacions disposicions institucions installacions investitures orders holye benediccions palles or other thinges requyste and necessary to thatteynyng of these their promocions . . . and albe it that . . . the King and all his naturall subjectys aswell spirituall as temporall ben as obedient devoute catholique and humble children of God and Holie Church as any people be within any Realme cristened . . . enacted: . . . that the unlaufull paymentys of Annates or furst fruytes and almaner contribucions for the same for any Archebysshoppriche or Byssshoppriche or for any Bulls hereafter to be opteyned from the Courte of Rome*

The house of commons now made an attack on the convocations, disputing their power to make constitutions and ordinances independently of royal assent or of the assent of lay subjects of the crown. This attack was supported by the king, although he sought to maintain the appearance of acting as a mediator. Under such pressure the convocation of Canterbury, after initial hesitation, announced its submission on the 15th of May, 1532. In the instrument drawn up it is conceded:—

1. Convocation may only be summoned at the king's command;

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to or for the forsaid purpose and intent, shall from hensforth utterly cesse, except in so far as is expressed below. Whoever, elected etc. to a bishopric, pays annates, first fruits or the like, forfeits to the king his personal property, and for the time during which he is in possession of the bishopric, all temporal lands and possessions pertaining to it.

s 2: *furthermore it is enacted . . . that every person hereafter named and presented to the Courte of Rome by the Kyng . . . to be Bysshop of any See or Dioces within this Realm, hereafter shalbe letted deferred or delayed at the Courte of Rome from any suche Bysshopriche wherunto he shalbe so presented, by meane of Restraynt of Bulles Apostolique and other thinges requisite to the same; . . . every suche person so presented may be and shalbe consecrated here in England by tharchebisshop in whose provynce the seid Bisshopriche shalbe, so alwaye that the same person shalbe named and presented by the Kyng for the time being to the same Archebysshopp; And yf any person being named and presented as is aforesaid to any Archebisshoppriche of this Realme making convenient sute as is aforesaid, shall happen to be letted deferred delayed or otherwise distourbed from the same Archebisshopriche for lacke of Palle, Bulles, or other thinges to him requysite to be opteyned in the Courte of Rome in that behalf; That then every suche person so named and presented to be Archebisshop may be and shalbe consecrated and invested after presentacion made as is aforeseid, by any other two Bysshopes within this Realme whome the Kinges Highnes or any of his heyres or successours Kynges of Englonde for the tyme being will assigne and appoynte for the same, according and in lyke maner as dyvers other Archebisshopes and Bysshopes have been heretofore in auncient tyme by sondry the Kynges most noble progenitours made consecrated and invested within this Realm; . . .*

s 3. For the writing, obtaining and sealing of the bulls there may however be paid to Rome 5 per cent. of the yearly value of the bishopric in question. The king may compound with the pope to reduce or extinguish annates, inasmuch as king and parliament would wish first to proceed by amicable means. The composition so made shall hold good in law.

s 4. The king is empowered up to the following Easter or before the beginning of the next parliament to declare by letters patent whether and in how far this is to be a statute or not.

s 5. If no redress be had by friendly means and the pope persists in his exactions and harasses the king or his spiritual or lay subjects by *excommunicacion excommengement interdiccion or by any other processe censures compulsories wayes or meanes*, the king, his temporal and lay subjects, shall, without scruples of conscience, minister or cause to be ministered all sacraments or other divine services, and this in spite of excommunications etc., which none are to publish or execute.

[The act was put into full force by royal letters patent of 9th July, 25 *Hen. VIII*, *i.e.* 1533 (printed in Statutes of the Realm, note to act); it was supplemented and made more severe by 25 *Hen. VIII* (1533/4) c 20 [on which see below, note 17]; it was repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 3, and again put in force by 1 *Eliz.* (1558/9) c 1 s 2. The firstfruits withdrawn from the pope by the act above, as also other dues, are transferred to the king by 26 *Hen. VIII* (1534) c 3.]

2. New canons, constitutions or other provincial ordinances cannot be enacted, promulgated or executed without royal leave first obtained; they need, moreover, the king's approval after acceptance by the synod;

3. Provincial constitutions, ordinances and canons already enacted shall be examined by a commission to be named by the king and consisting of members of parliament and of the clergy, and, so far as seems requisite, with the king's consent annulled.[10]

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[10] For the discussions which led up to this see Perry, *Hist. of Engl. Church* II, c 5 §§ 17 ff. The projected review of the older canons was never completed. See § 14, notes 17 ff. The declaration of submission runs (Wilkins, *Conc.* III, 754):—

We your most humble subjects, daily orators and beadsmen of your clergy of England, having one speciall trust and confidence in your most excellent wisdom, your princely goodnesse, and fervent zeal to the promotion of God's honour and christian religion, and also in your learning, farr exceeding, in our judgment, the learning of all other Kings and princes that we have reed of; and doughting nothing, but that the same shall still continew and dailey increase in your majesty,

first do offer and promise 'in verbo sacerdotii' here unto your highness, submitting our selfs most humbly to the same, that we will never from henceforthe enact, put in ure, promulge, or execute any newe canons or constitution provinciall, or any other newe ordinance, provinciall or synodall, in our convocations or synode, in time commyng, which convocation is, alway hath byn, and must be assembled onely by your high commandment or writte; only your highness by your royall assent shall lycence us to assemble our convocation, and to make, promulge, and execute such constitutions and ordinaments, as shall be made in the same, and thereto give your royall assent and authorite.

Secondarily, that whereas diverse of the constitutions, ordinaments, and canons provinciall or synodall, which have been heretofore enacted, but thought to be not only muche prejudiciall to your prerogative royall, but also over muche onerous to your highnesses subjects; your clergye aforesaid is contented, if it may stand so with your highnesses pleasure, that it be committed to the examination and judgment of your grace, and of thirty two persones, whereof sixteen to be of the upper and nether house of the temporalte, and other sixteen of the clergye, all to be chosen and appointed by your most noble grace. So that fynally whichsoever of the said constitutions, ordinaments, or canons provinciall or synodall shall be thought and determyn'd by your grace, and by the most part of the said 32 persons not to stand with God's laws, and the laws of your realme, the same to be abrogated and taken away by your grace, and the clergye. And such of them as shall be seen by your grace, and by the most part of the said thirty two persones to stand with Goddes lawes, and the lawes of your realme, to stand in full strength and power, your grace's most royall assent and authorite ones impetrate fully given to the same.

The instrument executed as to the presentation of the resolution by archbishop Warham to the king (16th May) describes this resolution as one framed only by the upper house of the convocation of Canterbury (Wilkins, *Concilia* III, 754): . . . *schedulam per ipsum et alios episcopos, abbates, et priores domus superioris convocationis praelatorum, et cleri provinciae Cant. in domo capitulari infra monasterium Westm. hesterna die, viz. quintadecima die hujus mensis Maii, tent. inactitatam, concordatam et conclusam . . . regi . . . tradidit.* According to Collier, *Eccles. Hist.* Ed. 1852 IV, 195 a special resolution of the lower house was not called for because the latter had already voted a more comprehensive declaration of submission, so that adhesion to the more limited declaration of the upper house was regarded as already given. According to Wilkins, *Concilia* III, 749 (resolutions of 13th and 15th May) it

In August, 1532, Warham, archbishop of Canterbury, died and was succeeded—the consecration was in March, 1533[11]—by Cranmer, who favoured the new doctrines and who had for some years been actively furthering Henry's case in the affair of the divorce. Whilst up to this point pope and king had shown consideration for each other, there now followed in swift succession measures which marked a complete breach between the two.

The act 24 *Hen. VIII* (1532/3) c 12 forbade appeals to the pope in matters pertaining to marriage, testaments and church dues ('tithes, oblations and obventions'), and it laid down that in all such cases final decision should be given by the authorities of the English national church.[12] Accordingly, the question of the king's divorce was, in spite of the fact that the pope had reserved decision to himself, tried before Cranmer as judge of the archiepiscopal court. Cranmer on the 23rd of May, 1533, pronounced the marriage null and void.[13] Anne Boleyn, whom the king had married privately some months before, was now crowned. The pope's answer was to give his own verdict and to declare the marriage of Henry and Catherine valid (23rd March, 1534).[14]

In England severance from the pope was completed by four important laws, in which he is entitled 'bishop of Rome' or 'bishop of Rome, otherwise called the pope.' By the first of these, called the statute of submission, 25 *Hen. VIII* (1533/4) c 19, the essential part of the declaration of submission made by the clergy in convocation two years before, was converted into an act of parliament, and at the same time every form of appeal to Rome was forbidden.[15]

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might well seem that on the 15th May the upper and lower houses adopted the same declaration.

As to the relation of this declaration of submission to the later statute of submission compare § 54, note 56.

[11] The appointment of Cranmer was made in the form hitherto customary—by election of the convent, royal confirmation, nomination to the pope and provision from him. For the substance of the several bulls relating to the appointment of Cranmer see Collier, *Eccles. Hist.* Ed. 1852 IV, 207.

[12] On this act see § 23, note 13. [13] Judgment in Wilkins, *Concilia* III, 759.

[14] Judgment in Wilkins, *Concilia* III, 769.

[15] 25 *Hen. VIII* (1533/4) c 19 *An Acte for the submission of the Clergie to the Kynges Majestie* [repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 3, revived by 1 *Eliz.* (1558/9) c 1 s 2].

s 1 converts into law the declarations of the clergy: the summoning of convocation, the making, publishing and execution of provincial ordinances, can only take place with the king's concurrence. Text in § 54, note 56.

s 2 empowers the king, in accordance with the declarations of submission, to name a commission of 32 persons to examine the older canons (cf. § 14, notes 17, 18).

s 3. No canons shall be made or executed which are contrary to the king's prerogative or to the laws or customs of the land. Text in § 14, note 16.

s 4. There shall be no manner of appeals to Rome. Text in § 23, note 14. A supreme court of appeal is established in England. Text in § 62, note 2.

s 5. Whosoever appeals to Rome or procures any sort of process thence to hinder the present law is subject to the penalties of praemunire according to 16 *Ric. II* c 5.

s 6. Appeals from places exempt from the archiepiscopal jurisdiction are to be to chancery, not to Rome.

Letters patent dated 9th of July, 1533, put into effect the statute already mentioned, 23 *Hen. VIII* c 20.[16] By 25 *Hen. VIII* (1533/4) c 20 the same statute is confirmed, and in so far extended that for the future no person is to be presented to the pope for the office of archbishop or bishop, and no annates or similar impositions are to be paid. In the same act the procedure for filling an archiepiscopal or episcopal see is newly and in detail prescribed, and the rules there laid down have remained in force—with interruption under Edward VI and Mary—down to the present day. The procedure is as follows:—When a see is vacant, the king grants to the cathedral chapter a licence to elect (*congé d'eslire*) and at the same time indicates in a separate communication (*letters missive*) the name of the person to be chosen. The chapter must elect this person and certify the election under seal to the king, to whom the elected has to take 'oath and fealty.' Then the king requires and commands, if a bishopric is to be filled, the archbishop, if an archbishopric, an archbishop and two bishops, or four bishops, to confirm the election and to consecrate and invest the elected. There is to be no procuring of bulls or other things from Rome.[17] The third law of the series is 25 *Hen. VIII* (1533/4) c 21, in which it is set forth as a reason for the enactment, that the king is by recognition of the convocations 'supreme head of the church of England,' the restrict ing clause added by the convocations being dropped. Peter pence and all other dues to the pope are abolished; suing at the Roman court for any dispensation or favour is forbidden under the penalties of praemunire; the powers which the pope had exercised in this

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s 7. Until the review of the older canons takes place, they are to be observed in so far as they are not repugnant to the king's prerogative or the laws and customs of the land. Text in § 14, note 17.

[16] Compare above, note 9.

[17] 25 *Hen. VIII* (1533/4) c 20 *An Acte restraynyng the payment of Annates [or First Fruits to the Bishop of Rome and of electing and consecrating of Archebishopes and Bishopes within this Realm*]. [ss 3 and 4 of this act were temporarily altered by 1 *Ed. VI* (1547) c 2 s 1; the whole act was repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 3, but revived in its full extent by 1 *Eliz.* (1558/9) c 1 s 2.]

s 1. As the pope has made no answer to the amicable overtures in accordance with 23 *Hen. VIII* c 20, that act has been confirmed by royal letters patent.

s 2. As it was not clearly expressed in that act how bishops are to be elected and consecrated, be it ordained that the said law be observed in all points; *except only that noo person . . . hereafter shalbe presented nomynated or commended to the seid Bishopp of Rome . . . to or for the dignitie or office of any Archebishopp or Bishopp within this Realme . . . , nor shall send nor procure there for any maner of Bulles breves palles or other thynges requysite for an Archebishop or Bishop, nor shall pay any sommes of money for Annotes first frutes or otherwyse for expedicion of any suche bulles breves or palles; . . .*

ss 3 and 4 contain the new regulations for the election and consecration of bishops and archbishops. Text in appendix X.

s 5. Such elections and consecrations are declared effectual.

s 6. Whosoever does not make election and notify it within twenty days, and whosoever does not consecrate and invest within twenty days after the king's letters patent of signification come to his hands, and whosoever obtains or executes ecclesiastical process in hindrance of this act is subject to the penalties of praemunire according to 25 *Ed. III* st. 5 c 22 and 16 *Ric. II* c 5.

respect are transferred to the archbishop of Canterbury, with whom in more important cases the lord chancellor must co-operate; attendance at general church councils abroad is prohibited; monasteries etc. exempt are placed under the visitation of royal commissioners; right of confirmation in respect of monastic elections, in so far as hitherto exercised by the pope, is also vested in royal commissioners.[18] The fourth law belonging here is what is known as the first act of supremacy, 26 *Hen. VIII* (1534) c 1. In it the king is declared to be 'the only supreme head in earth of the church of England,' again without the limiting clause of the convocation; that title and

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[18] 25 *Hen. VIII* c 21 *An Acte for the exoneracion frome exaccions payde to the See of Rome.*

s 1. The king is designated 'supreme hede of the Church of Englonde.' The text of the passage is given in § 28, note 3. It is then ordered: *that no person or persones of this your Realme or of any other your Domynyons shall from henceforth pay any pencions censes porcions peterpence or any other imposicions to the use of the seid Bisshopp or of the See of Rome . . .*

s 2. Neither the king nor a subject shall sue to the pope or to any commissioner of his for *licenses dispensacions composicions faculties grauntes rescriptes delegacies or any other instrumentes or wrytynges.* Upon application of the king, the archbishop of Canterbury shall grant him all necessary dispensations etc., which were before granted in Rome, but not *for any cause or matter repugnant to the law of Almyghty God.*

s 3. In like manner upon application of some other person. In cases which are unusual and in which dispensations had not been commonly granted by Rome, the approbation of the king or his council is to be first obtained.

s 4. If the dispensation etc. would have cost £4 or more according to the scale of taxing at Rome, it requires to be *confirmed by your Highness . . . under the greate Seale and inrolled in your Chauncerie . . .* The chancellor or keeper of the great seal (the two offices being identical at latest from the time of Elizabeth) needs no special warrant from the king to enable him to confirm the dispensation.

ss 5–10. Contain details as to registry of licences, fees etc.

s 11. Should the archbishop refuse a dispensation, a writ shall issue from the lord chancellor or the keeper of the great seal enjoining him to grant one or to show cause.

s 13. Nothing contained in this act shall be interpreted as implying an intention *to declyne or vary from the congregacion of Christis Churche;* it is only an ordinance rendered necessary by policy.

s 14. Relates to exempt monasteries and [text in § 26, note 7] to participation in foreign church councils.

s 15. The present law alters nothing in 21 *Hen. VIII* c 13 (touching pluralities and residence).

s 16. He who sues for dispensations etc. in Rome incurs the penalty of praemunire (16 *Ric. II* c 5).

s 17. Previous grants from Rome to monasteries etc. shall remain valid. But payments (pensions etc.) to Rome, papal visitations or confirmations of elections, and oaths to the pope are forbidden. Visitations and confirmations, where hitherto existing, pass to royal commissioners.

s 21. The king with the advice of his council can reform and change *indulgences and privyleges . . . obteyned at the see of Rome or by auctoritie thereof.*

ss 22, 23. Within a certain period the king may order the immediate execution (before the time fixed) of this act, or its annulment.

[The act was approved and put into force immediately by letters patent of 7th April, 25 *Hen. VIII, i.e.* 1534 (printed in *Statutes of Realm*, note 3 at end of act). It was repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 3 and rendered operative again by 1 *Eliz.* (1558/9) c 1 s 2.]

all honours, privileges and powers thereto pertaining are assigned to each subsequent holder of the crown; the king is to have the right of repressing all errors, heresies, abuses and other offences, which can be repressed by any spiritual authority or jurisdiction.[19]

To give practical effect to the act of supremacy Henry VIII in 1535 appointed his chief minister Crumwell as his representative ('vicegerent, vicar-general etc.') in ecclesiastical affairs,[20] and directed a visitation—the first took place in the autumn of the same year—of the monasteries and of the whole clergy.[21] At the same time, under date 18th September, 1535, he issued an inhibition to the bishops and their officers, forbidding them to exercise any jurisdiction whilst the visitation was pending.[22] He then transferred to the several bishops for the period of the visitation these rights of jurisdiction as rights emanating from himself and subject to recall. He left to the bishops besides—the rights committed to them in the Bible.[23] At the beginning of the year 1536 all monasteries etc.

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[19] Text in § 28, note 4.—The law was repealed by 1 & 2 *Phil. & Mar.* c 8 s 4, not afterwards revived, but replaced by similar provisions in 1 *Eliz.* c 1 ss 7–9.

[20] Cf. § 30, note 1.

[21] For the dates of the visitations of the monasteries in this and in the following years see Perry, *Hist. of Engl. Church* II, 122 c 8 § 5.

[22] The inhibition to archbishop Cranmer is printed in Wilkins, *Concilia* III, 797: *Cum nos auctoritate nostra suprema ecclesiastica omnia et singula monasteria, domos, prioratus, et loca alia ecclesiastica quaecunque, totumque clerum infra et per totum nostrum Angliae regnum constituta propediem visitare statuerimus; vobis tenore praesentium stricte inhibemus atque mandamus, et per vos suffraganeis vestris confratribus episcopis, ac per illos suis archidiaconis, infra vestram provinciam Cant. ubilibet constitutis, sic inhiberi volumus atque praecipimus, quatenus pendente visitatione nostra hujusmodi, nullus vestrum monasteria, ecclesias, ac loca alia praedicta, clerumve visitare, aut ea, quae sunt jurisdictionis, exercere, seu quicquam aliud in praejudicium dictae nostrae visitationis generalis quovismodo attemptare praesumat, sub poena contemptus.*

[23] Commission of the king to the bishop of Hereford, 14th October, 1535 (Wilkins, *Concilia* III, 797): *Quandoquidem omnis juris dicendi auctoritas, atque etiam jurisdictio omnimoda, tam illa, quae ecclesiastica dicitur, quam secularis, a regia potestate, velut a supremo capite et omnium infra regnum nostrum magistratuum fonte et scaturigine primitus emanaverit; sane illos, qui jurisdictione hujusmodi antehac non nisi precario fungebantur, beneficium hujusmodi, sic eis ex liberalitate regia indultum, gratis animis agnoscere, idque regiae munificentiae solummodo acceptum referre, eique (quoties ejus majestati videbitur) libenter reddere convenit. Cum itaque nos jure nostro universum clerum totius regni nostri Angliae visitare intendentes, . . . Thomae, Cant. archiepiscopo, ac per eum tibi et aliis hujus regni nostri episcopis quibuscunque, ne, pendente visitatione . . . ea quae sunt jurisdictionis, exercere attentares sive attentarent per alias literas inhibuerimus; quia . . . Thomas Crumwell, nostris et hujus regni nostri Angliae tot et tam arduis negotiis adeo praepeditus existit, quod ad omnem jurisdictionem nobis, ut supremo capiti hujusmodi competentem . . . in sua persona expediendam non sufficiet; nos . . . tibi vices nostras, sub modo et forma inferius descriptis committendas fore teque licentiandum esse decrevimus . . .* (Then follows the commission to ordain, institute, collate, invest, remove in the diocese of Hereford, and to deal in the customary way with matters of wills and administrations to the amount of £100, and with other causes which properly come before an ecclesi-

with a yearly income of less than £200 were suppressed and their property bestowed on the crown (27 *Hen. VIII* c 28). A few months later the first authorized declaration upon dogma appeared in the form of the ten articles, 'devised by the king's highness' majesty,' agreed to by convocation and afterwards published by the king. These articles correspond in many points with the doctrines of the German protestants; but in other respects adhere to Roman usage.[24] To give effect to the ten articles and to regulate several other subjects of interest to the church, Crumwell issued an ordinance of general purport called 'the king's injunctions to the clergy' (1536).[25]

All these innovations led to a formidable rebellion in the north (autumn 1536), which, however, was at first quieted by means of mutual concessions by the two parties. When, in spite of these concessions, the outbreak began anew, it was sternly suppressed by the king. But, though the doctrinal changes already introduced were in general maintained,[26] Henry refused (1538) to make the further advance in that direction to which the German protestants

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astical court.) . . . *Caeteraque omnia et singula in praemissis tantum, seu circa ea necessaria seu quomodolibet opportuna, praeter et ultra ea, quae tibi ex sacris literis divinitus commissa esse dignoscuntur, vice, nomine, et auctoritate nostris exequendi tibi . . . vices nostras . . . committimus, et liberam facultatem concedimus; teque licentiamus per praesentes ad nostrum beneplacitum duntaxat duraturas, cum cujuslibet congruae et ecclesiasticae coercionis potestate.* . . . This commission refers in its empowering part only to the duration of the visitation.—By a further commission of 21st July, 1536 (Wilkins, *Concilia* III, 810) the right of visitation within his diocese was conferred on a bishop also of Hereford upon the same conditions.

[24] Compare § 16[1].

[25] Printed in Wilkins, *Concilia* III, 813. This is the first of the ordinances entitled *injunctions*.—To the year 1536 belong the two following laws:—

28 *Hen.* (1536) c 10 *An Acte extynguysshing the auctoryte of the Busshop of Rome.* It declares that anyone supporting the authority of the bishop of Rome by writing, preaching, teaching or act shall incur the penalty of praemunire provided by 16 *Ric. II* c 5. All ecclesiastical and secular officials are to take the oath of supremacy now first introduced, a refusal of it being declared to be high treason. (In regard to the oath of allegiance, cf. the acts concerning the king's succession, 25 *Hen. VIII* c 22 s 9; 26 *Hen. VIII* c 2; 28 *Hen. VIII* c 7 s 1.)

28 *Hen. VIII* c 16 *An Acte for the release of suche as have obteyned pretended Lycences and Dispensacions from the See of Rome.* All bulls etc. previously granted by the bishop of Rome or his predecessors are to be void, and use may not be made of them under penalty of praemunire. All officers of the church already appointed may exercise their rights in virtue of the present act, not of any foreign authority. Dispensations, faculties etc. granted by the pope to individuals, may have effect for one year to come but solely in virtue of this act and in so far as they could have been conferred by the archbishop of Canterbury. The bulls etc. are to be delivered to an officer to be named by the king, and new licences conferred under the great seal. So will they obtain validity.

[26] Especially was this the case in the *Institution of a Christian Man* (published May, 1537), a sort of catechism, discussed and agreed by the bishops and a number of archdeacons and professors, licensed by the king; and in Crumwell's *injunctions* for the year 1538. On both points see Perry, *Hist. of Engl. Church* II, 150 ff. c 9 §§ 17 ff.

had repeatedly been urging him. To prevent the reformation in belief from proceeding against his will, he brought about a statutory prohibition, enforced by threats of the severest penalties, against denying certain of the older doctrines of the church. This is known as the six article law, 31 *Hen. VIII* (1539) c 14, which was followed by a series of similar enactments.[27] Nevertheless, in the last years of the reign some alterations of the church service in a protestant sense were gradually effected.[28]

Moreover, in the years after 1536 the process of innovation or reform in the matter of the church *constitution* was more vigorously pursued than that in respect of doctrine. Menaces of all kinds compelled the larger monasteries, one after another, to dissolve. The act 31 *Hen. VIII* (1539) c 13 conveyed to the crown the property of all monasteries suppressed or relinquished since the first statute of dissolution, and of all to be suppressed or relinquished in the future.[29] The lands and rents which thus accrued to the crown were, in great part, given, sold at a cheap rate or bartered away to the great ones of the land in order thus to identify the interests of influential families with the reformation. Other important consequences attended the confiscation of the monasteries. With the extinction of monastic representatives vanished for ever that numerical preponderance of the clergy in the upper house of parliament[30] which had hitherto prevailed. By 31 *Hen. VIII* (1539) c 9 Henry had been empowered to establish a certain number of episcopal sees and cathedral churches and to endow them with confiscated monastic property. Of this act he availed himself, founding six new episcopal sees[31] and introducing into those of the older bishoprics in which hitherto there had been monastic convents instead of chapters, a regular cathedral constitution with secular canons.[32] Furthermore, he established a number of collegiate churches as a compensation for dissolved monasteries.

After the death of Henry VIII the party of those who desired further advance in the direction of *doctrinal* innovations, gained immediate ascendency in the council of regency.[33] Thus Hertford,

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[27] On the provisions of the six article law see § 16[2] and § 22, note 19; on further legislation with the same tendency see § 19, notes 24 and 25.—In 1543 *The Necessary Erudition of any Christian Man* was, after approval by the convocation, published by the king. This is a revision of the *Institution of a Christian Man* in the direction of a somewhat stronger leaning to the old doctrine. Compare Perry, *Hist. of Engl. Ch.* II, 179 c 10 pt. ii § 3.

[28] Perry, *Hist. of Engl. Church* II, 181 c 10 pt. ii § 4.

[29] Other statutes of dissolution are 32 *Hen. VIII* (1540) c 24 (hospitallers of saint John), and 37 *Hen. VIII* (1545) c 4 (colleges, chantries, hospitals etc.); of later date: 1 *Ed. VI* (1547) c 14 (similar foundations) and 1 *Eliz.* (1558/9) c 24 (new foundations in Mary's reign).

[30] Compare § 21, notes 38, 39.

[31] Compare § 33, note 35.

[32] Compare § 37, notes 21, 22.

[33] The council of regency for the minority of Edward VI was appointed under Henry VIII's will. The king had nominated leading men of both parties. Gardiner, one of the most prominent adherents of the old doctrines, had been struck out of the list owing to complicity in a court plot to draw the king to the Roman catholic side.

afterwards duke of Somerset, was chosen lord protector. Moreover the young king, Edward VI, frequently expressed himself without reserve in favour of the innovations. Decisive measures were taken without delay. 1 *Ed. VI* (1547) c 1 directed, in agreement with a previous resolution of convocation, that the 'sacrament of the altar' should be received in both kinds.[34] 1 *Ed. VI* (1547) c 12 repealed the laws against heretics, the six article law and all other laws touching doctrine.[35] 2 & 3 *Ed. VI* (1548) c 1 brought in a book of common prayer, based in most respects on protestant doctrines.[36] 2 & 3 *Ed. VI* (1548) c 21 took away all positive laws against the marriage of priests, though it pronounces such marriages undesirable.[37] 5 & 6 *Ed. VI* (1551/2) c 1 substituted for the first book of common prayer a revision of it in which the protestant views were accepted even in regard to the last considerable matter at issue.[38] Lastly in 1553 the king published, probably after convocation had deliberated on it, the confession of faith known as the forty-two articles.[39] Side by side with these enactments were numerous injunctions, proclamations and administrative regulations, all aiming at the removal of surviving Roman usages, such as the worshipping of images, pilgrimages, obligatory auricular confession etc.[40]

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[34] *An Acte against such as shall unreverentlie speake against the Sacrament of the bodie and bloude of Christe commonlie called the Sacrament of the Altar, and for the receiving thereof in both kyndes.* [Repealed by 1 *Mar.* st. 2 (1553) c 2; revived by 1 *Eliz.* (1558/9) c 1 s 5.]

[35] *An Acte for the Repeale of certaine Statutes concerninge Treasons, Felonyes, etc.*

s 1. No offence made high treason or petit treason by statute shall be adjuged to be such except under 25 *Ed. III* st. 5 c 2 [cf. § 60, note 45] or under this act.

s 2. 5 *Ric. II* st. 2 c 5; 2 *Hen. V* st. 1 c 7; 25 *Hen. VIII* c 14; 31 *Hen. VIII* c 14; 34 & 35 *Hen. VIII* c 1; 35 *Hen. VIII* c 5, *and all and every other Acte concerning doctrine and matters of Religion* are repealed.

s 3. All new felonies made by statute since the accession of Henry VIII are repealed.

s 4. 31 *Hen. VIII* c 8 and 34 & 35 *Hen. VIII* c 23 (rendering royal proclamations valid as acts) are repealed.

ss 5, 6. Penalties fixed for asserting that the king is not, or that the pope is, supreme head of the church [repealed by 1 & 2 *Phil. & Mar.* c 8 s 7].

s 7. Nothing in this statute shall be construed to repeal the laws against counterfeiters of coins or of the king's sign manual.

s 8. Any attempt of heirs to the king or successors to the crown to disturb the order fixed by 35 *Hen. VIII* c 1 is high treason.

ss 9 ff. refer mainly to the allowance of benefit of clergy. Cf. § 61, note 6.

[36] Compare § 15[1]. [37] Compare § 22, note 23.

[38] Compare § 15[2]. [39] Compare § 16[3].

[40] These injunctions are to be found in Cardwell, *Documentary Annals* I, 4 ff.—Other laws which belong here are:—

2 & 3 *Ed. VI* (1548) c 19 *An Acte for abstinence from Fleshe.* As though every day and every kind of food is equally holy, yet abstinence subdues the body to the spirit, and as through greater use of fish the fishers are the better employed and much flesh is spared, it is laid down under penalties that no flesh may be eaten on the usual fish days.

3 & 4 *Ed. VI* (1549/50) c 10 *An Acte for the abolishinge and puttinge awaye of diverse Bookes and Images.* All English and Latin books of any

On the other hand, in the matter of the church constitution the government was content to abide almost wholly by the precedents of king Henry's time. It issued general injunctions regarding church affairs, exercised the right of visitation, and required the bishops, in consideration of the devolution of the crown, to sue for new commissions to use such powers as were not conferred upon them by the Bible. The commissions granted are almost verbally identical with those of Henry VIII's reign; only they do not like the latter contain a limitation to the time of a royal visitation.[41] The act 1 *Ed. VI* (1547) c 2 substituted, in the filling of bishoprics, appointment by royal letters patent for the nominal election introduced under Henry VIII; it further enacted, in connexion with the powers conferred on the bishops, that in future the writs and judgments of ecclesiastical courts should run in the king's name, whilst a bishop might, as before, issue in his own name letters of orders, deeds of appointment and similar documents.[42] It is to be

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kind which have been beforetime employed for divine service and have not been set forth by the king, as also all images before or now in a church, are to be destroyed under penalty to the possessor or are to be delivered up to be destroyed. Primers issued by Henry VIII may be used if invocations of saints or prayers to saints are blotted out. Monuments and the images thereon may remain, unless the dead person has been worshipped as a saint.

5 & 6 *Ed. VI* (1551/2) c 3 *An Acte for the Keping of Hollie daies and Fastinge dayes.* Certain days are declared holidays and certain, fasting days. Offenders to be punished by the censures of the church. The provisions of 2 & 3 *Ed. VI* c 19 are maintained.

[The two last acts are repealed by 1 *Mar.* st. 2 (1553) c 2.]

[41] The commission granted to archbishop Cranmer (7th Feb. 1547) is printed in Cardwell, *Doc. Ann.* I, 1. According to Burnet, *Hist. of Reformation* Ed. 1865 II, 41, the bishops newly appointed under Edward VI (Ridley, for example, consecrated 25th Sept. 1547) were not compelled to procure similar commissions, so that they received their powers of jurisdiction for life, not subject to revocation. By letters of the king to the archbishops, 4th May, 1547 (the letter to the archbishop of York is printed Cardwell, *Doc. Ann.* I, 24 and corresponds to the letter of Henry VIII quoted in note 22; an identical letter to the archbishop of Canterbury is mentioned in Wilkins, *Concilia* IV, 14) the exercise of ecclesiastical jurisdiction during the coming royal visitation was forbidden, but further letters allowed, in accordance with the precedent in Henry VIII's reign, a temporary exercise of such jurisdiction (ex. of such letters, Wilkins, *Concilia* IV, 14).

[42] 1 *Ed. VI* (1547) c 2 *An Acte for the election of Bisshoppes, and what Seales and Style they and other Spirituall persons exercising Jurisdiction Ecclesiasticall shall use.*

s 1; . . . *enacted, that fromhensfurthe no suche Conge dislier be graunted nor election of anny Archebisshopp or Bisshopp by the Deane and Chapiter made, But that the King maye by his lettres patentes at all tymes when anny Archebisshoppriche or Bisshoppriche be voide conferre the same to anny parsone whom the King shall thincke mete; The which collacion so by the Kinges lettres patentes made and delivered to the persone to whome the King shall conferre the same Archebisshoppriche or Bisshoppriche . . . shall stande to all intentes constructions and purposes to as muche and the same effecte as thoughe Conge dislier had byn given, thelection dewlie made and the same confirmed; And that uppon* [. . .] *the said parsone to whome the saide Archebisshoppriche Bisshoppriche or Suffraganshipp is so conferred collated or given maye be consecrated and sewe his Livery* (=the delivery of

observed, however, that even under Edward VI the episcopal constitution of the church was maintained.[43]

Mary, the daughter of Catherine of Arragon, ascended the throne (6th July, 1553) upon the premature death of Edward. The way in which the inception of the English reformation had been accompanied by an attack on the validity of her mother's marriage, naturally prejudiced her against reform. Nor had any change in her views taken place after her mother's death; on the contrary, she had during Edward's reign continued in spite of the punishing of her chaplains to worship in the old forms. Upon her accession she availed herself of the rights of supremacy which the law placed at her command to influence the clergy toward the old doctrines. But a permanent result could only be obtained by the repeal of the reforming enactments. A law was accordingly passed

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property, *i.e.* the temporalities, into possession) *or outerlemayne* (=*ouster* [*ôter*] *le main*, the delivery of land from the hand of an administrator such as a guardian or the king) *and doo other thinges aswell as if the saide Ceremonies and elections had been doon and made.*

s 3: . . . *enacted*, . . . *that all somons and citations or other processe Ecclesiasticall in all suites and cawses of Instaunce betwixte partie and partie, in all cawses of correction, in all cawses of bastardye or bigamye, or inquirie de jure patronatus, probates of Testamentes and Commissions of Administracion of persons decessed, and all acquittaunce of and uppon accomptes made by the executours administratours or Collectours of Goodes of anny deade persone, be from the first daye of Julye next following made in the name and with the Style of the King, as is in writtes originall or judiciall at the Comen Lawe, and that the Teste therof be in the name of the Archebisshop or Bisshopp or other having Ecclesiasticall Jurisdiction who hath the Commission and graunte of thauctoritie Ecclesiasticall Immediatlie from the Kinges Highnes; and that his Commissarie Officiall or Substitute exercising Jurisdiction under him shall putt his name in the Citacion or processe after the Teste.*

s 6. The archbishop of Canterbury shall use his name and seal for all *faculties and dispensacions* according to the act dealing therewith; *and that the saide Archebisshoppes and Bisshoppes shall make admitte order and refourme their Chauncellors officialles comissaries advocates proctours and other their officers ministers and substitutes and commissions to Suffrigan Bisshoppes in their owne names under their owne seales in suche manner and fourme as theie have heretofore used, . . . and lykewise shall make collacions presentacions giftes institucions and inductions of benefices lettres of orders or dimissories under their owne names and seales as theie have heretofore accustomed.*

s 7: . . . *that all processes hereafter to be made or awarded by any Ecclesiasticall person or persones for the tryall of any plee or plees or matter depending or that hereafter shall depende in anny of the Kinges Courtes of Recorde at the commen lawe, and lymitted by the lawes and customes of this Realme to the spirituall courtes to trye the same, that the certificate of the same after the tryal therof shalbe made in the Kinges name for the tyme being and with the stile of the same King, and under the Seale of the Bisshopp graved with the Kinges armes with the name of the Bishopp or spiritual. Officer being to the Teste of the same processe and Certificate and to everye of them.*

[This act was repealed by 1 *Mar.* st. 2 (1553) c 2 (cf. also, touching the jurisdiction of the bishops, 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 24 *sub finem*); it was never revived. Cf. § 61, note 2.]

[43] But a presbyterian church for strangers was established in London.

which cancelled their penal provisions.[44] On the other hand, the house of commons rejected the bill by which the government endeavoured to obtain the repeal of all the acts of the last two reigns which affected the exercise of religion. However, after a prorogation, the government, in spite of determined opposition from a third of the lower house, carried its proposal to repeal all the more important reform laws of Edward VI and to establish the form of divine service used in the last year of Henry VIII.[45] In home and foreign policy the queen was easily accessible to the influence of her near kinsman, the emperor Charles V of Germany. By his contrivance negotiations were opened for the marriage of Mary to his son, Philip II of Spain. But parliament petitioned the queen to marry an Englishman. The queen declared this to be an encroachment upon her prerogative and dissolved parliament. The new house approved the articles of marriage with Philip.[46] Nevertheless, the proposals made by Mary's authority to abolish her title as supreme head of the church and to revive the laws against heretics were rejected. The pope had immediately after her accession appointed Reginald Pole as his legate in England. Pole had been raised to the cardinalate for his resistance to the legislation of Henry VIII, but in England had been attainted of high treason. As the act of attainder had remained in force, the legate, at the suggestion of Mary and of Charles V, had not entered England, but had taken up his abode in the Netherlands. Having regard to the attitude of the English parliament, the pope was now induced to empower his legate to renounce all claim to the restitution of church lands, that renunciation being the price paid for the re-establishment of the papal supremacy in England. Upon this, at the end of 1554, the attainder of Pole was reversed. A few days afterwards he appeared in England, gave absolution to parliament and convocation at their request, and made a declaration by which

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[44] 1 *Mar.* st 1 (1553) c 1 *An Acte repealing certayne Treasons Felonies and Premunire.*

s 1: . . . *enacted* . . . *that from hensforthe none Acte Dede or Offence, being by Acte of Parlyament or Statute made Treasone petite Treasone or Misprision of Treason* . . . *shall be taken* . . . *to be Highe Treason petite Treason or Misprision of Treason, but onely suche as bee declared and expressed to bee Treason etc. by* . . . 25 *Ed. III* st. 5 . . .

s 3: . . . *that all Offences made Felonye, or limited or appointed to be within the cace of Premunire, by any Acte* . . . *made sithens* 1 *Hen. VIII, not being Felony before, nor within the case of Premunire* . . . *shall from hensforthe bee repealed* . . .

[45] 1 *Mar.* st. 2 (1553) c 2 *An Acte for the Repeale of certayne Statutes made in the time of the Raigne of Kinge Edwarde the Syxthe.*

s 1. Repealed were: 1 *Ed. VI* c 1; c 2; 2 & 3 *Ed. VI* c 1; c 21; 3 & 4 *Ed. VI* c 10; c 12; 5 & 6 *Ed. VI* c 1; c 3; c 12.

s 2: . . . *all such Divine Service and Administration of Sacramentes as were most commonly used in the Realme of Englande, in the last yere of the reigne of* . . . *Henrie theight, shall bee from* 20 *dec.* 1553 *used and frequented through the hole Realm of Englande and all other the Quenes Majesties Dominions; and* . . . *no other* . . .

[46] 1 *Mar.* st. 3 (1554) c 2.

dispensation was granted for the acquisition of church lands and for certain official proceedings since the reformation. It was only after this had been done that 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 was passed, repealing all enactments directed against the papal supremacy since the twentieth year of Henry VIII, that is since the 22nd of April, 1528. The statute also confirmed the matter of the legate's dispensation, with the express addition that that dispensation removed all trouble and difficulty which might have proceeded from ecclesiastical authorities, but that the title of all lands was based on the laws of the realm. In like manner all powers and privileges of the crown were vindicated, as they had existed before the twentieth year of Henry's reign. The efforts of the legate and of king Philip to cause the restoration of papal supremacy and the confirmation in the possession of church lands to be expressed in separate enactments had proved futile.[47] In the

[47] 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 *An Acte repealing all Statutes Articles and Provisions made against the See Apostolick of Rome since* 20 *Hen. VIII and also for thestablishment of all Spyrytuall and Ecclesiasticall Possessions and Hereditamentes conveyed to the Layetye.*

s 1 contains the text of the petition of parliament which through the queen was to reach cardinal Pole. In the petition regret for the schism was expressed, as also the willingness to repeal all laws against the supremacy of Rome since 20 *Hen. VIII.* Absolution had been granted through Pole. The undertaking to repeal the acts in question must now be made good.

s 2 repeals those provisions of 21 *Hen. VIII* c 13 which declare the procuring of bulls for pluralities or non-residence to be a penal offence.

s 3 repeals entirely: 23 *Hen. VIII* cc 9, 20; 24 *Hen. VIII* c 12; 25 *Hen. VIII* cc 19, 20, 21.

s 4 repeals entirely: 26 *Hen. VIII* cc 1, 14; 27 *Hen. VIII* c 15; 28 *Hen. VIII* cc 10, 16; 31 *Hen. VIII* c 9; 32 *Hen. VIII* c 38; 35 *Hen. VIII* c 3; also that part of 28 *Hen. VIII* c 7 which prohibits marriage within certain degrees.

s 5 repeals that part of 35 *Hen. VIII* c 1 which prescribes the taking of an oath of supremacy, and also voids all oaths taken in consequence of that statute.

s 6 repeals 37 *Hen. VIII* c 17.

s 7 repeals that part of 1 *Ed. VI* c 12 which threatens penalties for denying the king's or maintaining the pope's supremacy.

s 8: . . . *that all clauses sentences and articles of every other Statute . . made sithence* 20 *Hen. VIII againste the supreme aucthoritie of the Popes Holines or Sea Apostolike of Rome, or conteining matter of the same effect onely, that is repealed in any of the Statutes aforesaid, shall be also by aucthoritee hereof from hensforthe utterly voide* . . .

s 9. There has, furthermore, been handed to the queen another petition (quoted *verbatim*), praying that the pope might for the removal of all contentions grant through his legate dispensations touching:—

1. New foundations of bishoprics, cathedral churches etc.
2. Marriages within the prohibited degrees (in so far as the pope has been accustomed to grant dispensations).
3. Appointments to church offices, and dispensations.
4. Processes before ordinaries or delegates.
5. The acquisition of the lands of bishoprics, monasteries etc.

s 10. There has been a corresponding petition (quoted *verbatim*) of the convocation of Canterbury to the crown, wherein it is prayed that for the sake of peace Pole may be moved to grant dispensation for alienated church lands and that all things may be restored *quae ad jurisdictionem nostram et libertatem Ecclesiasticam pertinent.*

s 11. Pole's answer to Philip and Mary is quoted *verbatim.* In it all the requirements of parliament in s 9 are granted; but the division of bishoprics

same parliament a measure was adopted for the revival of the old laws against heretics.[48] Such of the confiscated church lands as were still in the hands of the crown were by 2 & 3 *Phil. & Mar.* (1555) c 4 released for ecclesiastical purposes.[49]

Whilst parliament in this way had yielded, reluctantly and not without reservation, to the endeavour to undo the reformation, convocation had from the outset offered no resistance to the government. The bishops who belonged to the reform party were under various pretexts removed from their offices.[50] Among the lower clergy there

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and the erection of cathedral churches need to be confirmed by the pope. Of the movables of churches at least the sacred vessels should be given up, and provision should be made for parsons and vicars.

s 12 confirms by law the matter of this dispensation.

s 13. The dispensation has with regard to lands or goods which have passed into other hands *taken away all matter of empeachment trouble and danger, whiche by occasion of any generall Councell Canon or Decree Ecclesiasticall might touche and disquiet the Possession . . . yet for that the title of all Landes Possessions and Hereditamentes in this your Majesties Realme and Dominions, ys grownded in the Lawes Statutes and Customes of the same, and bye your highe Jurisdiction Aucthoritie Roiall and Crowne Imperiall and in your Courtes onely to be empleaded ordred tryed and judged and none otherwise*, acquisitions, it is expressly stated, made in accordance with the laws of the realm, are to hold good.

s 16. Whosoever by means of the process of an ecclesiastical court molests any on account of the possession of church lands, incurs the penalty of praemunire according to 16 *Ric. II* c 5.

s 18. Although the title of supreme head of the church cannot rightly be used by an English king, yet writs, letters patent etc. in which it has been used shall be valid.

s 19. The queen since her accession has not used this title. As it depended on her free choice whether she should use it or not, grants, letters patent etc. in which it is omitted are valid.

s 20. All bulls made void by 28 *Hen. VIII* c 16 shall become effectual in so far as *not conteyning matter contrarye to or prejudiciall to aucthoritie dignitie or preheminence Roiall or Imperiall of the Realme, or to the Lawes of this Realme now being in force and not in this Parliament repealed.*

s 21. By grants of Henry VIII and Edward VI the jurisdiction over certain parish churches and chapels which were before exempt from the bishop and subject to a monastery, has been transferred to laymen. These grants are made void.

s 23. For the next twenty years, with certain limitations land may be given in mortmain.

s 24. Nothing in this act shall diminish the privileges etc. of the crown as they were up to the 20th year of Henry VIII's reign. The pope shall be restored to the authority he then exercised or might legally exercise. In like manner the jurisdiction of the bishops is restored.

[As to the extent to which this act was repealed by 1 *Eliz.* c 1 see below, note 53.]

[48] 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 6 *An Acte for the renueing of three Estatutes made for the punishment of Heresies.* Revived are: 5 *Ric. II* st. 2 c 5; 2 *Hen. IV* c 15; 2 *Hen. V* st. 1 c 7.

[This act and the three acts mentioned therein were repealed by 1 *Eliz.* c 1 s 6.]

[49] *An Acte for thextinguishement of the Fyrst Fruites etc. and of Rectories and Parsonages impropriate remayning in the Quenes handes.* The act also contains the royal renunciation of the first-fruits and tithes conferred by 26 *Hen. VIII* c 3.—Cf. 1 *Eliz.* c 4.

[50] See Perry, *Hist. of Eng. Church* II, 228 c 13 s 16, with note. Such removals were partly in imitation of analogous proceedings under Henry VIII and Edward VI.

were still to be found many adherents of the old faith, and the influence of the crown had sufficed to reduce the voting power of the party of reform to small dimensions.

Under the now revived laws against heresy, Cranmer and other prominent persons were burned. Pole was consecrated archbishop in Cranmer's place, remaining at the same time in the post of first minister. Owing to the influence of Philip, England became involved in the Spanish war with France. The new pope, Paul IV, sided with the French, and it was accordingly important to him to cause embarrassment to the English government. He withdrew from archbishop Pole, who belonged to the moderate section of the papal party, the legatine commission, and took steps to call him to account for deviation from the teaching of the church. The queen interposed, and ultimately Paul seems to have given way and allowed the archbishop to resume his functions as legate, at least provisionally.[51]

The measures adopted under Mary shook the reform party, but by no means annihilated it. Two attempted risings were suppressed, several conspiracies discovered. The capture of Calais by the French intensified the discontent in the country. Under the pressure of religious persecution there was an increase in the number of those who desired to go beyond the principles of the early English refor-

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[51] On the legatine commission of Pole compare Brady, *The Episcopal Succession* I, 5 and 33. Pole was despatched on the 5th Aug. 1553 as *legatus a latere* (bull in Wilkins, *Concilia* IV, 87). According to Brady *l.c.* full legatine authority was conferred upon him by bulls of the 8th March, 1554; he received additional powers on the 6th July, 1554 (Brady II, 293) and in the year 1555. At the consistory of the 11th Dec. 1555 the pope appointed him administrator of the archbishopric of Canterbury. His designation in the appointment is (Brady II, 321) *Sedis Apostolicae in Regno Angliae de Latere Legatus ad ejus vitam.* In 1557 he was removed from office as legate. At the consistory of 14th June, 1557, the pope announced that he had received letters from queen Mary and the prelates, according to which all England was in excitement at Pole's recall. At the same consistory Peto (the papal claimant to the see of Salisbury, recognized apparently as little by Henry VIII as by Mary) was appointed legate and was granted all rights which Pole had enjoyed (Brady II, 321). Peto died in March, 1558.—Compare further Matthew Parker, *De Antiquitate Britannicae Ecclesiae et Privilegiis Ecclesiae Cantuariensis etc.* Lambeth, 1572 p. 421: *Id quod pontificem in Polum vehementius irritavit, quod suis contra Caesarem et Hispanos pro regno Neapolitano vindictaeque cupiditate inceptis obstaret, seque officii munerisque sui in ea causa in qua redargui a quocunque nollet, admoneret. Itaque papa abrogata Poli legatione eum Romam revocavit, eiusque loco Gulielmum Petrum Franciscani ordinis virum Cardinalem atque Legatum creavit. . . . Haec omnia Mariae Reginae priusquam Polo nunciabantur, quae eo inscio iussit ne hi qui in Angliam a papa mitterentur, Anglorum ope traiicerent aut ad portus appellerent, tum si quae literae perferantur, ut interceptae non Polo sed sibi traderentur; . . . Papa . . . respondit, Polum probabilibus argumentis atque coniecturis in haeresis suspicionem sibi Romanaeque curiae venisse, ideoque a se Romam accersiri . . . Hoc etsi Regina caelare Polum voluit, tamen is ab aliis nunciis accepit, atque prorsus ab argentea cruce gestanda, omnique legatina administratione munereque cessavit, misitque . . . ad papam . . .; . . . Papa . . . permisit Polo Legationem gerere, donec Caraffam Cardinalem fratris sui filium pacem inter Philippum et Gallum initurum mitteret. . . .* Cf. § 34, note 13.

mation and who in doctrine and as to church government took for their models the *Reformirten* of the continent. Mary's reign was cut short by her decease on the 17th of November, 1558. Pole died next day; and thirteen other bishops passed away shortly before or after him. Thus at a critical moment the papists were robbed of a considerable number of their leaders.

Elizabeth, the daughter of Anne Boleyn, next ascended the throne. She was reputed a protestant, but had under Mary accommodated herself to the changes introduced. Receiving an offer of marriage from Philip of Spain, she at first replied evasively, then ultimately refused it. At the commencement of her reign it seemed as if some agreement with Rome might be reached. She notified her accession to the pope, who, however, made reconciliation impossible, disputing that she, as the offspring of an illegitimate union, had any right to succeed, and even reminding her of the feudal relation of England to the papal see. His action was a natural consequence of the papal declaration that the marriage of Henry VIII with Catherine was valid; but he had in view at the same time the advantage of his ally France, where the heir to the throne had wedded Mary, queen of Scotland, a claimant to the English crown.[52] For the second time papal diplomacy had the effect of binding an English ruler to the party of reform by the tie of personal interest.

After certain temporary measures legislation of a decisive character ensued. By 1 *Eliz.* (1558/9) c 1 royal supremacy was restored in the extent to which it had been claimed by Henry VIII; the taking of an oath of supremacy and allegiance was enjoined under penalty of loss of ecclesiastical and secular offices; to the sovereign was assigned the title of 'supreme governor as well in spiritual as in temporal things,' the earlier designation 'supreme head of the church' being avoided; the most important acts of Henry VIII touching church constitution and the act of Edward VI as to the receiving of the eucharist in both kinds were revived, and the laws against heretics abolished.[53] The act 1 *Eliz.* (1558/9) c 2, which in

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[52] The marriage was on 29th April, 1558. Mary Stuart's husband ascended the French throne as Francis II on 10th July, 1559. He died on 5th December in the following year.

[53] 1 *Eliz.* c 1 *An Acte restoring to the Crowne thauncyent Jurisdiction over the State Ecclesiasticall and Spirituall, and abolyshing all Forreine Power repugnaunt to the same.*

s 1. 1 & 2 *Phil. & Mar.* c 8 is repealed so far as the contrary is not afterwards declared (cf. ss 4, 16).

s 2. Revived and to be applied in regard to Elizabeth and her heirs are: 23 *Hen. VIII* cc 9, 20; 24 *Hen. VIII* c 12; 25 *Hen. VIII* cc 19, 20, 21; 26 *Hen. VIII* c 14; 28 *Hen. VIII* c 16.

s 3. Revived in so far as not altered under Edward VI are: 32 *Hen. VIII* c 38; 37 *Hen. VIII* c 17.

s 4. The acts repealed by 1 & 2 *Phil. & Mar.* c 8 remain repealed in so far as they are not specially mentioned and revived by the present act.

s 5. 1 *Ed. VI* c 1 is revived.

s 6. Repealed are 1 & 2 *Phil. & Mar.* c 6 and the heresy laws therein mentioned.

the upper house was passed by a narrow majority, again prescribed the use of the second prayer-book, somewhat altered, of Edward VI.[54] 1 *Eliz.* c 24 transferred to the crown the property of all monasteries restored or newly founded since Edward's death.[55]

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s 7: . . . *enacted . . . that no forreine Prynce Person Prelate State or Potentate Spirituall or Temporall shall at any tyme after the last Daye of this Session of Parliament, use enjoy or exercise any manner of Power Jurisdiccion Superioritee Aucthorite Preheminence or Privilege Spirituall or Ecclesiasticall within this Realme or within any other your Majesties Dominions or Countreis that now be or hereafter shalbee, but fromthensforthe the same shalbee clerely abolished out of this Realme and al other your Highnes Dominions for ever.*

s 8 contains the positive grant to the crown of rights of church government (text § 28, note 9) and empowers it to appoint commissioners to exercise these rights (text § 30, note 3).

s 9. The following oath of supremacy is to be taken by all church officials, clergy and temporal officials, and by all who 'have the king's fee or wages':—

I . . . doo utterly testifie and declare in my Conscience, that the Quenes Highnes is thonelye supreme Governour of this Realme and of all other her Highnes Dominions and Countreis, aswell in all Spirituall or Ecclesiasticall Thinges or Causes as Temporall, and that no forreine Prince Person Prelate State or Potentate hathe or oughte to have any Jurisdiccion Power Superioritee Preheminence or Aucthoritee Ecclesiasticall or Spirituall within this Realme, and therfore I doo utterly renounce and forsake all forraine Jurisdiccions Powers Superiorities and Aucthorities, and doo promise that fromhensforthe I shall beare Faithe and true Allegiance to the Quenes Highnes her Heires and lawfull Successoures, and to my power shall assist and defende all Jurisdiccions Preheminences Privileges and Aucthorities granted or belonging to the Quenes Highnes her Heires and Successoures, or united or annexed to Thimperiall Crowne of this Realme: So helpe me God and by the Contentes of this Booke.

s 10. Whoever does not take the oath, loses the office he now holds. In case of future appointments the oath must be taken before the office is entered on.

s 12. The oath is also to be taken by *persons Temporall suing Lyverie or Oustre le maine out of thandes* of the king, by persons who are received into the king's service and by those who take orders, or degrees at the universities.

s 14. Penalties for upholding foreign ecclesiastical jurisdiction by writing, preaching etc. In case of relapse, praemunire according to 16 *Ric. II* c 5; of repeated relapse, the punishment for high treason.

s 16. This act does not revoke any provision contained in 1 & 2 *Phil. & Mar.* c 8 touching any case of praemunire.

s 18. In any process under this act against peers for praemunire or high treason, proceedings shall be before peers.

s 19: . . . *That no maner of Order Acte or Determinacion for annye Matter of Religion or Cause Ecclesiasticall had or made by thaucthoritie of this present Parliament, shalbe accepted demed interpretated or adjudged at any time hereafter to be any Errour Heresie Scisme or Scismaticall Opinion; . . .*

s 20. Limitation of heresy (text § 19, note 30).

s 22. Penalties for aiding and abetting offences against this act.

[54] *An Acte for the Uniformitie of Common Prayoure and Dyvyne Service in the Churche, and the Administration of the Sacramentes.* Cf. § 15[4].—In the upper house the bill was passed by a majority of only three votes. All the spiritual lords voted against it.—Against Roman forms of divine service Elizabeth proceeded with great caution, and retained, in part, Roman ceremonies in her own chapel.

[55] *An Acte to annexe to the Crowne certayne Religious Howses and Monasteries and to refourme certayne Abuses in Chantreis.* The act also conveys to the crown foundations since the death of Edward VI for the saying of masses, burn-

By this legislation the constitution of the church as it had been under Henry VIII and, with some modifications, religious belief as it had obtained under Edward VI again received the sanction of law. All the bishops with one exception refused to take the oath of supremacy and were declared to have forfeited their offices.[56] In like manner a number of the inferior clergy had to surrender their positions. It was only by degrees that the vacancies thus created could be filled. The execution of the acts was entrusted to royal commissions which in a short time developed under the name of the 'high commission court' into a permanent civil board for the government of the church.[57]

From the beginning of the reign of Elizabeth the existence of the party which demanded a further advance in the direction of reform than the English church had taken, made itself still more perceptible than hitherto. Its tendencies were opposed by the government. Thus government and church came to be so situated that they had to fight with double front—against the papists on the one side, against puritans and sectaries on the other. It is on this contest that the ecclesiastical and, in great measure, the civil history of England turns for the next few centuries.

§ 7.

b. The struggle against papists and protestant sects at the end of the sixteenth and in the seventeenth century.[a]

Even in the earliest years after the final victory of the reformation under Elizabeth the protestant episcopal church of England drew lines of demarcation, between itself and the papists on one hand, and, on the other, between itself and more advanced protestants. In 1563 the formulary of belief known as the thirty-nine articles was agreed in convocation and set forth with the authority of the queen. The document, which is to be connected with the forty-two articles of 1553, lays down an independent system of dogma, with express repudiation of a great number of Romish doctrines and usages, but also in opposition to the views of the more advanced protestants. As touching the constitution of the church, the thirty-nine articles reject explicitly the authority of the pope ;[1] but on the other hand it is implied that the episcopal constitution is

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ing of lamps etc. Compare also 1 *Eliz.* c 4 *An Acte for the Restitution of the First Fruites, and Tenthes and Rentes reserved Nomine Decime, and of Parsonages Impropriate, to Thimperiall Crowne of this Realme.*

[56] 39 *Eliz.* (1597/8) c 8 declared retrospectively all deprivations and appointments from the beginning of the reign to 10th Nov. 4 *Eliz.* (*i.e.* 1562) to be incontestable at law. [57] Cf. § 30. [1] Art. 37.

[a] Perry, *Hist. of English Church* II, 286 ff. cc 17 ff.—Ranke, *Engl. Geschichte*, Bk. III ff.—Cf. also appendix XIV, II, 3 *a, c.*

not necessary but allowable.[2] The clergy were required by their ecclesiastical superiors to subscribe; but there was no statutory enforcement of subscription until 1571.[3] As, moreover, there was a legal compulsion to take the oath of supremacy and to use the prayer-book, a possibility existed of gradually driving from the ministry of the church all who were recalcitrant. The exercise of such compulsory powers had its natural effect: the members of the advanced section now parted company with the state church and formed themselves into separate church communities. Thus in 1566 a number of the deprived clergy combined to practise their own form of worship, and so laid the foundation of the sect of puritans. This sect, which soon grew to great importance, attacked the state church in several quarters: in regard to constitution, the puritans were the champions of presbyterianism; in doctrine, they followed mainly the *Reformirten* of the continent; in the matter of forms and ceremonies, they demanded the abolition of many usages which the English church had retained from prereformation times.[4] The mainstay of the puritans was in the neighbouring country of Scotland, in which the presbyterian model prevailed.

Whilst the puritans could be kept down by a slight exercise of ecclesiastical or civil pressure, to resist successfully the renewed attacks of the papal party at home and abroad, Elizabeth was compelled to put forth the whole power of the state. In 1568 Mary, queen of Scots, had fled to England. Elizabeth endeavoured to bring about a reconciliation between her and her Scottish nobles; but the attempt miscarried. Mary was now detained in England to prevent her from uniting with France or Spain against England. As the head of the papists in Great Britain, and as being, according to the pope's judgment, the rightful queen of England, or at least, by general consent, entitled to succeed to its crown, she remained, meanwhile, a constant danger to the life and rule of Elizabeth. With the co-operation and partly at the instigation now of the pope and his agents, papist priests and jesuits, now of the ambassadors of Spain and France, sometimes too with Mary's cognizance, many risings and attempts to assassinate the queen took place in England. At last Mary, there being no other means of securing internal tranquillity, was tried, condemned[5] and, on the discovery of a new conspiracy, put to death (1587). By excommunicating Elizabeth and forbidding obedience to her under penalty of excommunication (1570),[6] Pius V had made the quarrel desperate. At Douay (after-

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[2] Arts. 36, 34. Compare below, § 18.

[3] For a further account of the thirty-nine articles see § 16[5]; they are printed in appendix XI.

[4] The chief points at issue are brought together in Neal, *Hist. of Puritans* Ed. 1822 I, 191 ff.

[5] Under 27 *Eliz.* (1584/5) c 1 *An Act for Provision to be made for the Suertie of the Queenes Majesties most Royall Person, and the continuance of the Realme in Peace.*

[6] The countermeasure was 13 *Eliz.* (1571) c 2 *An Act agaynste the bringing in and putting in Execution of Bulls and other Instruments from the Sea of*

wards at Rheims), at Rome and at other places on the continent seminaries were erected to train priests under jesuit control for service in England.[7] The year 1580 saw the first seminarists despatched to these shores. The object of those who came was to detach, outwardly as well as in inner feeling, the papists of England from the national church and to organize them as a separate ecclesiastical community. By 27 *Eliz.* (1584/5) c 2 the jesuits and all Romish priests were banished from England.[8]

Even before the execution of Mary, war had broken out with Spain. Elizabeth had secretly assisted alike the French protestants and the insurgents in the Netherlands. With the latter at the point of succumbing and the Spaniards planning a descent upon England, she in 1585 declared open war. The course of this war, in origin mainly religious, was fortunate, and the victories of England laid the foundation of its naval power. In Ireland only did the power of Elizabeth encounter resistance until her death.[9]

In legislation the endeavour was, as before, to compel all the inhabitants of the country into the established church and to induce them to take part in its services. Conspicuous enactments in this direction are 23 *Eliz.* (1580/1) c 1 and 35 *Eliz.* (1592/3) cc 1 and 2.[10]

Upon the death of Elizabeth (24th March, 1603) the crowns of England and Scotland were united in James I, who, though the son of Mary Stuart, had been brought up a protestant. James had in 1586 concluded with Elizabeth the offensive and defensive alliance of Berwick,[11] upon the promise that his claim to succeed to the English throne should not be questioned. During the struggle with Spain which ensued he had suppressed a rising in Scotland of the popish nobles, although to their religion generally he extended a wide toleration. Papists were even found among the teachers of his children. Upon his accession to the English throne he either did not execute the laws against them at all or only in a modified form, and sought to mitigate the zeal of parliament against jesuits,

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Rome.—To leave the papists in outward conformity to the law, but still in an ambiguous position, the bull of excommunication was interpreted some years afterwards: *catholicos tum demum obliget, quando publica ejusdem bullae executio fieri poterit.* It was renewed by Sixtus V (1585–90).

[7] Neal, *Hist. of Puritans* Ed. 1822 I, 272, gives the following seminaries: Douay 1569, Rome 1579, Valladolid 1589, Seville 1593, St. Omer 1596, Madrid 1606, Louvain 1606, Liege 1616, Gent 1624.

[8] *An Act against Jesuites Semynarie Priestes and such other like disobedient Persons.*

[9] Cf. § 11, nr. note 21.

[10] 23 *Eliz.* (1580/1) c 1 *An Acte to reteine the Queenes Majesties Subjectes in their due Obedience.* 35 *Eliz.* (1592/3) c 1 *An Acte to retayne the Quenes Subjectes in Obedyence*, is especially directed against protestant sectaries (s 9). The enactment was for a fixed time which was several times prolonged—43 *Eliz.* (1601) c 9 s 1, 1 *Jac. I* (1603/4) c 25 s 1, 21 *Jac. I* (1623/4) c 28 s 1, 3 *Car. I* (1627) c 5 s 3. To meet doubts it was declared by 16 *Car. II* (1664) c 4 s 1 to be still in force.
35 *Eliz.* (1592/3) c 2 *An Acte against Popish Recusantes*, confirmed by 3 *Jac. I* (1605/6) c 5 s 4.

[11] Compare § 10, note 26.

seminary priests and refusers of the oath of supremacy.[12] The puritans lost no time in forwarding him a petition in favour of certain changes in the prayer-book and certain reforms in the administration of the church.[13] In consideration of these desires the king arranged the Hampton court conference (1604) between puritans and representatives of the state church. As the issue of this conference some immaterial changes in the prayer-book were made. Moreover, the king went some way towards meeting the wishes of the puritans for a stricter observance of the Sabbath. But greater individual liberty in regard to doctrine and worship was not conceded to the clergy. The convocation of the southern province in 1604 approved, and the king set forth, for the northern as well as the southern province, a long series of canons which determined the principles of internal church government, and aimed at strengthening the influence of the ecclesiastical authorities upon the lay authorities of the parish-community. These canons are—apart from certain changes made by resolution of convocation or parliamentary enactment—still binding on the clergy at the present day; they are among the fundamental laws of the English state church.[14] James persistently favoured the high church (hierarchical) tendency in England; similarly in Scotland, both before and after his attainment of the English throne, he was concerned to transform slowly the presbyterian into an episcopal constitution.

The mildness shown to the papists, joined to severity towards the advanced protestant movement, caused opposition to the government to spring up in parliament. The quarrel was soon extended to the department of finance. With more or less violence it continued to rage during the whole of James's reign, the opposition being led for long by chief justice sir Edward Coke. The great jurist was in 1616 deprived by James of his offices; his legal works, in which the rights of the state as against the church are frequently discussed,

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[12] Against the puritans, however, were passed the strict laws 1 *Jac. I* (1603/4) c 4 *An Acte for the due Execution of the Statutes againste Jesuits Seminarie Preistes Recusants etc.*; 3 *Jac. I* c 4 *An Acte for the better discovering and repressing of Popish Recusantes*, and c 5 *An Acte to prevent and avoid dangers which may grow by Popish Recusantes*, both the latter upon occasion of the gunpowder plot (1605); 7 *Jac. I* (1609/10) c 6 *An Acte for administringe the Oath of Allegiance and Reformacion of married Women Recusantes.* — Against royal dispensations from obeying the laws is directed 21 *Jac. I* (1623/4) c 3 *An Act concerning Monopolies and Dispensations with penall Lawes and the Forfeyture thereof.*

[13] The millenary petition is printed in Perry, *Hist. of Engl. Church* II, 372 c 22, notes and illustrations, and in Collier, *Eccles. Hist.* Ed. 1852 VII, 273.

[14] The more important provisions of the canons of 1604 which refer to the constitution of the church are extracted in appendix XII.—After the canons had been by royal ordinance introduced into the province of York as well as that of Canterbury, the king by letters patent of 18th Feb. 1606 licensed the northern convocation to make canons subject to his approval (licence in Wilkins IV, 426). On 19th March, 1606 (Wilkins IV, 428; according to Trevor, *The Convocations of the two Provinces* p. 101, on 10th March, 1606) the northern convocation accepted the canons of 1604 passed by the southern convocation and ratified by the king, and desired the royal approval.

have exercised an influence on the practice of the courts which is still appreciable.

Dissensions at home availed to check the display of England's power externally. Shortly after his accession the king had made peace with Spain. In the years which followed he gave constant support to the protestants of the continent, especially of Germany. Upon the outbreak of the thirty years' war, however, despite the expressed wish of parliament, he refused armed intervention and confined his efforts on behalf of his son-in-law, Frederick, the elector-palatine, to peaceful negotiations. Herein he was governed by his resolve to avoid enterprises of magnitude, because the expenditure involved by them would make him dependent on parliamentary grants; moreover, the fact that he was in treaty with Spain for several years to bring about an union between his heir and a Spanish princess, caused him to abstain from more active interference.[15] But these negotiations were broken off, and before the king's death England entered into political relations with France in opposition to Spain. On the 11th of May, 1624, the king issued a commission to treat with France for perpetual amity and a marriage between the successor to the English crown and a French princess.[16] In the course of the proceedings James pledged himself to give, in addition to the concessions in the marriage contract proper, a secret assurance whereby the papists in England should be allowed the free exercise of their religion. This assurance was to be laid before the pope as an inducement to him to grant the French princess a dispensation for the marriage. On the 12th of December, 1624, the marriage contract was signed by James I, the secret assurance by him and his successor.[17] The French afterwards put forward new demands.[18]

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[15] In course of the negotiations the king swore to observe the articles of marriage and four secret articles, both containing the conditions laid down by the pope as to be fulfilled, before he would grant a dispensation for the marriage (printed in Dumont, *Corps universel diplomatique*, Amsterdam and the Hague, 1726–31, vol. V pt. 2 p. 440. Compare also Rushworth, *Historical Collections*, London, 1659–1701, pt. 1 vol. I p. 86). The articles of marriage concede: free exercise of religion for the infanta, her family and her suite; twenty-four Roman catholic priests and one Roman catholic bishop to be included in that suite; the right to educate her children at least to their tenth (according to the oath of prince Charles, to their twelfth) year of age; the laws against papists not to be applicable to the children, even in case of succession to the throne. The secret articles embodied the king's pledge not to execute any laws against papists or repugnant to the Romish religion, to endeavour to effect their repeal by parliament, not to set forth any such new laws, and to allow the private exercise of the Roman catholic worship. Similar oaths were taken by the heir to the throne and the members of the privy council.

[16] The commissions are printed in Rymer, *Foedera* 3rd Ed. VII, pt. IV p. 139.

[17] Letter of secretary Conway to the English ambassadors in France, 23rd December, 1624 (in Hardwicke, *Miscellaneous State Papers*, London, 1778, I, 547). The concession of the English ambassadors, Paris, 18th Nov. 1624, as to the secret assurance to be given runs:—

Le Roy de la Grande Bretaigne donnera au Roy un escrit particulier signé de luy, du Serenissime Prince son fils, et d'un Secretaire d'Estat; par lequel il promettra, en foy et parole de Roy, Qu'en contemplation de son tres cher fils, et de Madame Soeur du Roy tres Chrestien, qu'il permettra à tous ses subjects

Charles I, immediately after his accession (27th March, 1625) renewed the commission to his plenipotentiaries (30th March).[19] The marriage contract was subscribed by the king of France on the 8th of May, among its clauses being one which admitted the princess and her suite to the free exercise of their religion.[20] Besides this

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Catholiques Romains de jouir de plus de liberté et franchise, en ce qui regarde leur religion, qu'ils n'eussent fait en vertu d'articles quelconques accordés par le traité de mariage fait avec l'Espagne: ne voulant, pour cet effect, que ses subjects Catholiques puissent estre inquietés en leurs personnes et biens pour faire profession de la dite religion et vivre en Catholiques, pourveu toutesfois qu'ils en usent modestement, et rendent l'obeisance que de bons et vrays subjects doivent à leur Roy, qui par sa bonté ne les restreindra pas à aucun serment contraire à leur religion.

[18] Letter of lord Carlisle (one of the English ambassadors in France) to the duke of Buckingham, 16th Feb. 1625 (printed in Hardwicke, *l.c.* I, 551).

[19] Commission printed in Rymer, *Foedera* 3rd Ed. VII, pt. IV p. 191.

[20] Printed in Rymer, *Foedera* 3rd Ed. VII, pt. IV p. 189 :—

. . . *seront Fiances selon la forme usitee en l'Eglise Catholicque, Apostolicque et Romayne.*

. . . *le Mariage indissoluble se celebrera en France,* . . .

. . . *ma dite Dame, estant arrivee en Angleterre,* . . . *le dit Contract* (the present contract of marriage) *sera de nouveau Ratiffie par Sa dite Majeste de la Grande Bretaigne,* . . . *en la quelle* (action) *n'interviendra aucune Ceremonie Ecclesiastique.*

Le libre exercice de la Religion Catholicque, Apostolicque et Romaine est accorde a Madame, comme aussy a toute sa Suitte et aux Enfans qui naistront de ses Officiers; pour cet effect ma dite Dame aura une Chapelle dans toutes les Maisons Royalles, et en quelque lieu des Estats du Roy de la Grande Bretaigne, qu'elle se trouve et demeure; que les dits Chapelles seront Ornees comme il appartient et besoing, et la Garde en seront Cominse a tel quil plaira a ma dite Dame ordonner, la Predication de la Parolle de Dieu, et Administration de Sacremens, la Messe, et tous Offices divins pourront librement et solemnellement estre faits en icelles selon l'usage Romain, mesmes toutes Judulgences et Jubillez, que ma dite Dame obtiendra du Pape, y pourront estre gaingnez; sera aussy donne un Cimetiere en la Ville de Londres, au quel ceux de la Suitte de ma dite Dame qui viendront a deceder, seront inhumez selon l'usaige de l'Eglise Romaine, ce qui se fera modestement; le quel Cimetiere sera ferme en sorte quil ne puisse estre veu: ma dite Dame aura un Evesque pour son grana Aumosnier, qui aura toute Jurisdiction et Auctorite, necessaire pour les Causes qui regardent la Religion, le quel pourra proceder contre les Ecclesiasticques, qui seront soubz sa Charge, selon les Constitutions Canonicques; et en cas que la Cour seculiere se saisist de quelque un des dits Ecclesiasticques, pour quelque Crime qui concernast l'Estat, et quelle eust faict Informer contre luy, elle renvoyera au dit Evesque le dit Ecclesiasticque avec les Charges et Informations faictes contre luy, a fin qu'il congnoisse du Delict, le quel estant previllegie, il le remettra entre les mains de la dite Cour seculliere, après l'avoir Degrade, et pour toute aultre faulte seront renvoyez les dits Ecclesiasticques au sus dit Evesque, pour proceder contre eulx selon les Constitutions Canonicques; et en cas d'absence ou Maladie dudit Evesque, celluy, quil commettra pour son Grand Vicaire, aura le mesme pouvoir.

Ma dite Dame aura vingt huict Prestres ou Ecclesiasticques sur l'Estat de sa Maison, en ce compris ses Aumosniers et Chappellains pour deservir les susdites Chappelles, selon quil leur sera ordonne; et si aucun d'entre eulx est Regullier, il pourra retenir son habit.

Le Roy de la Grande Bretaigne est oblige par serment de ne tascher, par quelque voye que ce puisse estre, de faire renouncer Madame a la Religion Catholicque, Appostolicque et Romaine, ni la porter a chose quelconque qui y soit contraire.

contract the old private pledge, given by Charles when still heir apparent, remained in force.[21]

The marriage thus conditioned was not long delayed.[22] With the French princess many Romish priests entered the country. When parliament pressed for the execution of the laws against papists, the king did indeed issue ordinances in the sense required;[23] as, however, the government was bound by the secret assurance, efforts to enforce the anti-papal legislation were transient, and the king distributed indulgences and pardons on a liberal scale. But when the Roman catholic priests became too presumptuous, they were sent back to France,[24] and few were allowed to return. The effect of this friction was that France, to whom moreover Spain had yielded regarding the affairs of Italy, joined in the Spanish war with

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. . . *Tous les Domesticques que Madame menera en Angleterre seront Catholicques et Francois choisiz par Sa Majeste Treschrestienne, et ou ilz viendroient a mourir, ou que ma dite Dame en voulust changer quelques ungs, elle en prendra en leur Place d'aultres Catholicques et Francois, ou Angloys, moyennant que Sa Majeste de la Grande Bretaigne y consente.*

. . . *Les Enfants qui naistront du dit Mariage, seront nourriz et eslevez jusques a la Age de treize ans, aupres de ma dite Dame Royne des leur Naissance* . . .

[21] Cf. a complaint made by the French ambassador on 3rd Nov. 1625, and based on the terms of the secret assurance; also the answer of Charles I (both in Rymer, *Foedera* 3rd Ed. VIII, pt. I p. 159). The latter runs:—

. . . *Que pour ce qui touche les Catholiques Romaines Subjets de sa Majeste, on n'a oublie aucun point ni aucune Circumstance, qui ait este promise en leur faveur; Et qu'elle n'a autre desir ni Intention que de Traiter ses dits Subjets Catholiques Romains en toute Equite; Et, en Consideration et pour l'Amour de son bon Frere et de sa Treschere Espouse, leur faire toute la Grace et Faveur qu'on se pourroit promettre et esperer, tant aux Considerations susdites, que pour les Promesses faites et Articulees auparavant son Mariage.*

Mais qu'il plaise aussi au Roy Treschrestien, et a ses Ministres, de se ressouvenir que les plus obligeans et exacts termes et mots, compris es dictes Articles, furent proposez de la part du Roy Treschrestien, seulement aux fins de donner au Pape telle Satisfaction, que la Dispensation s'en puist ensuivre; Et que, du coste de sa Majeste, on s'est tousjours reserve, que le premier et principal soing seroit la Conservation de son Estat, et la Paix et Seurete de ses Royaumes . . .

James I and Charles I might well believe that they were entitled to enter into such engagements as were contained in the contract and, to a much greater extent, in the secret assurance, seeing that they—not without earlier precedent but with the violent opposition of parliament—claimed a general right to dispense from obedience to parliamentary enactments. This claim plays an important part in the controversies of the later Stuarts with the parliament.—Cf. the act 21 *Jac. I* (1623/4) c 3, referred to in note 12.

[22] The solemn confirmation of the marriage contract provided for in it and to ensue after the queen's arrival in England took place 21st June, 1625. Deed of confirmation in Rymer, *Foedera* 3rd Ed. VII, pt. IV p. 191.

[23] In the king's letter of 15th Dec. 1625, to the archbishop of Canterbury touching recusants (Cardwell, *Doc. Ann.* II, 155) he exhorts the clergy to discover and apprehend jesuits, seminary priests, 'popish recusants and delinquents of that sort,' as well as those who 'do keep more close and secret their ill and dangerous affection that way.' By way of supplement to previous legislation 3 *Car. I* (1627) c 3 was passed—*An Act to restraine the Passing or Sending of any to be popishly bred beyond the Seas.*

[24] Cf. Collier, *Eccles. Hist.* Ed. 1852 VIII, 25.

England. In the course of the struggle the English several times essayed in vain to relieve La Rochelle, the last stronghold of the French protestants, invested by Richelieu's orders.

At home the quarrel between king and parliament grew fiercer year by year. A long series of constitutional questions came, by degrees, to be at issue. But amid constitutional questions religious antagonism was an unceasing influence. As early as the last years of James I's reign Arminian[25] teaching had found many adherents among the clergy of the established church. Arminianism was the antithesis to calvinism, and an approximation, in many points, to Romish views. James's last parliament had already attacked one of his chaplains who maintained the doctrines of Arminius. Charles took up the quarrel with the parliament in this as in other matters. In spite of continued censure of his attitude, it was preferentially from the Arminian school that he took the men with whom he filled the highest posts in the administration of the church. Thus, in particular, to this school belonged Laud, promoted in 1633 to the archbishopric of Canterbury, who from the beginning of the reign had exerted a decisive influence on the king's ecclesiastical policy. The high church party, in return, supported the king against the constitutional demands of parliament and began to develop the theory that unconditional obedience was due to the king in so far as was not contrary to the divine laws.

After several dissolutions and prorogations the king, from the year 1629, endeavoured to govern without a parliament. In the same year he made peace with France;[26] in the following, with Spain.[27] France, in the treaty of peace, did not insist on the exact observance of the marriage contract. And while France silently renounced a formal assurance in regard to the English catholics, England made a similar abstention in respect of the French protestants.

Under the guidance of Laud the Arminian school made further progress; the representatives of the more advanced sections were kept down by the severe punishments inflicted by the high commission, and many of the persecuted sought refuge in America. In Ireland the lord deputy, sir Thomas Wentworth, carried in 1634 the acceptance of the English thirty-nine articles by the Irish church.[28] For Scotland Charles, exceeding his powers, issued in 1635 a book of

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[25] Arminius, the founder of the school (born 1560, died 1609) was from 1603 professor at Leyden.

[26] April, 1629 (ratified by Charles, 11th June); printed in Rymer, *Foedera* 3rd Ed. VIII, pt. III p. 52:—

c 3: *Quant a ce qui regarde les Articles et Contracts de Mariage de la Reine de la Grande Bretagne, ils seront confirmes de bonne foy, et sur ce qui concerne la Maison de la Reyne, s'il y a quelques choses à adjouster ou diminuer, se fera de part et d'autre, et de gré à gré, ainsi qu'il sera jugé plus à propos pour le Service de ladite Reine.*

The treaty contains provisions neither as to the English catholics, nor as to the French huguenots.

[27] 5th Nov. 1630 (ratified by Philip, 17th Dec.); treaty printed in Rymer, *Foedera* 3rd Ed. VIII, pt. III p. 141.

[28] Compare § 11, nr. note 26.

canons, by which, in particular, the royal supremacy in church affairs was to be recognized in Scotland; and moreover, in 1636, a new liturgy based on the English book of common prayer. The result of these innovations in Scotland was a popular outbreak and ultimately open war against the king. A decisive encounter was, it is true, for the moment avoided through the pacification of Berwick; but the resolution of the next Scottish general assembly led to new embroilments, and both sides again armed. To obtain a grant of money the king summoned the English parliament, 13th April, 1640; as, however, the commons insisted that the national grievances should first be discussed, the 'short parliament' was dissolved on May, the 5th of the same year.

The convocations of the southern and the northern province had, in accordance with custom, been summoned simultaneously with parliament; contrary to custom,[29] upon the strength of a new royal authorization, the legality of which was doubtful, they continued their session after parliament was dissolved.[30] They proceeded to vote a series of canons, in which the divine right of kings was recognized, armed resistance to the king under all circumstances condemned, and an oath imposed on the clergy by which they were to bind themselves never to consent 'to alter the government of this church by archbishops, bishops, deans and archdeacons et cetera, as it stands now established.'[31] The validity of these canons was at once contested by many, as well owing to the form in which they had originated, as because their matter was repugnant to the laws and customs of the land.[32] Especially against the oath was there such strong opposition that the king instructed the archbishop for the present not to compel the taking of it.[33]

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[29] But a similar case had occurred in 1585. Collier, *Eccles. Hist.* Ed. 1852 VII, 44. Some of the judges and jurists gave in 1640 an opinion (Cardwell, *Synodalia* II, 613) to the effect that convocation could sit after the dissolution of parliament.

[30] Details will be found in Perry, *Hist. of Engl. Church* II, 434 ff. c 27 §§ 11 ff.; the proceedings of the convocation of Canterbury in Cardwell, *Synodalia* 593.

[31] The canons of 1640 and the royal letters patent publishing them are printed in Cardwell, *Synodalia* 380. In the letters patent the king repeats the assurance already made to parliament that he had no intention of introducing the Roman catholic religion, at the same time threatening everyone who shall in future maintain so with prosecution before the high commission. The rubrics of the canons run: I *Concerning the regal power;* II *For the better keeping of the day of his majesty's most happy inauguration;* III *For the suppressing the growth of Popery;* IV *Against Socinianism;* V *Against Sectaries;* VI *An oath enjoined for the preventing of all innovations in doctrine and government* (cf. § 18, note 9); VII *A declaration concerning some rites and ceremonies;* VIII *Of preaching for conformity;* IX *One book of articles of inquiry to be used at all parochial visitations;* X *Concerning the conversation of the clergy;* XI *Chancellors' patents* (cf. § 36, note 9); XII *Chancellors alone, not to censure any of the clergy in sundry cases;* XIII *Excommunication and absolution not to be pronounced but by a priest;* XIV *Concerning commutations, and the disposing of them;* XV *Touching concurrent jurisdiction;* XVI *Concerning licenses to marry;* XVII *Against vexatious citations.*—For the money grants of the convocations of 1640 see § 54, note 58.

[32] The various arguments against the validity of the canons are collected in

In August the Scots acting in concert with a part of the English opposition marched into England. The king had indeed collected an army to oppose them, but the militia raised showed itself not absolutely to be depended on, and it was impossible to procure the necessary funds. Thus Charles was obliged again to summon parliament, which met on the 3rd of November, 1640, and at once began the attack upon the measures of the government and upon the machinery on which and the persons on whom the government had mainly relied. Up to the beginning of 1642 the king yielded step by step to the opposition.

On the 11th of November, 1640, the commons impeached Strafford, the chief minister of the crown, of high treason; on the 18th of December they proceeded in the same way against archbishop Laud. The persons of both were seized. Strafford was condemned by bill of attainder,[34] the impeachment in progress before the lords being abandoned. On the 10th of May, 1641, the king gave his assent to the bill and two days later Strafford was executed. Laud remained in prison.

It was ordained by statute[35] that the parliament then assembled should not be dissolved, prorogued or adjourned by the king alone, but by act of parliament to be passed for that purpose. The high commission court was abolished and its restoration forbidden, the act which dissolved it depriving all ecclesiastical tribunals of authority to inflict fines, imprisonment or corporal punishment for any offence belonging to spiritual cognizance.[36] Proposals to destroy the epis-

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Neal, *Hist. of Puritans* Ed. 1822 II, 323. The commons, by resolutions of 15th and 16th Dec. 1640 (printed, from Rushworth, *Hist. Coll.* pt. II p. 1365, in Collier, *Eccles. Hist.* Ed. 1852 VIII, 189), pronounced the canons not binding. On 3rd June, 1641, a bill was brought in by which the canons were declared void and their authors punishable. This bill, however, was not proceeded with (Cardwell, *Synodalia* 386, note); but, in substitution, an impeachment of thirteen bishops for taking part in making and executing the canons was delivered at the bar in the lords' house (Collier, *l.c.* VIII, 216, from Rushworth, pt. III p. 359); but after the preliminary steps had been taken the impeachment was allowed to drop (Fuller, *Ch. Hist.* Ed. 1845 VI, 211).—After the restoration the act 13 *Car. II* (1661) st. 1 c 12 s 5 (printed in note 69) left the question whether the canons were valid or not undetermined.

[33] The instruction, dated 30th Sept. 1640, is printed in Nalson, *Collection of Affairs of State* I, 399 and after him in Neal, *Hist. of Puritans* Ed. 1822 II, 307.

[34] 16 sq. *Car. I* (1640 ff.) c 38 *An Act for the Attainder of Thomas, Earle of Strafford of High Treason.*

[35] 16 sq. *Car. I* c 7 (May, 1641).

[36] 16 sq. *Car. I* c 11 (5th July, 1641) *An Act for repeal of a branch of a Statute primo Elizabethe concerning Comissioners for causes Ecclesiasticall.*

s 1 revokes the statutory authority for establishing a high commission court; s 4 forbids the future establishment of such a court.

s 2: . . . *that no Archbishop Bishop no Vicar Generall nor any Chancellour Official nor Commissary of any Archbishop Bishop or Vicar Generall nor any Ordinary whatsoever nor any other Spirituall or Ecclesiasticall Judge Officer or Minister of Justice nor any other person or persons whatsoever exercising Spirituall or Ecclesiasticall power authoritie or jurisdiction by any Grant Licence or Commission of the Kings Majestie his Heires or Successors or by any power or authoritie derived from the King his Heires or Successors or otherwise shall . . . award impose or inflict any paine penalty fine*

copal form of government were, at first, not accepted even in the lower house. A bill sent up to disqualify bishops from sitting as members of parliament was thrown out by the house of lords. With the Scots peace was concluded on the 7th of August, 1641. But the demands they put forward in the course of the negotiations, that only persons of the reformed religion should hold office about the king and the heir apparent, and that the constitution of the church should be the same in both countries, were not conceded; freedom of action was left in respect of the first demand to the king, of the second to the English parliament.[37] The commons, however, renewed the claim that the bishops should be stripped of their temporal powers, and the bishops, the objects of an outbreak of mob violence,

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amercement imprisonment or other corporall punishment upon any of the Kings Subjects for any contempt misdemeanor crime offence matter or thing whatsoever belonging to Spirituall or Ecclesiasticall cognizance or Jurisdiction; whosoever administers an oath to any *churchwarden, sydeman* or other person, whereby he or she shall be obliged to make presentment of any offence or to accuse himself or herself so as to incur punishment, shall forfeit to the aggrieved treble damages together with £100 to him who shall first demand and sue for the same.

s 3. Convicted offenders against this act may not have office in any court of justice upon the strength of a royal commission.

[37] 16 sq. *Car. I* c 17 *An Act for the Pacification between England and Scotland.* In it are set forth the articles of the treaty of Westminster, 7th Aug. 1641, concerning peace between the king and the Scottish people and between the two kingdoms. The following are the most important in an ecclesiastical sense:—

Art. I. The king will publish the acts of the last and the next session of the Scottish parliament, commanding that they shall have the force of law. (Agreed 3rd Dec. 1640.)

Art. II. Scotchmen shall not be constrained to take oaths in England or Ireland which are against their covenant. Scotchmen who have land in England or Ireland, or Englishmen and Irishmen who have land in Scotland or settled trades there, shall be subject to the laws of the land where their ordinary and constant residence is. (Agreed 8th Dec.)

Art. VIII: *To their* (the Scottish negotiators') *desire concerning unity in religion and uniformity of Church Government as a speciall meane for conserving of Peace betwixt the two Kingdomes upon the grounds and reasons conteyned in the paper of the tenth of March given in to the Treaty and Parliament of England. It is answered* (by the negotiators on the part of the king) *upon the eleventh of June that his Majestie with advice of both Houses of Parliament doth approve of the affection of his subjects of Scotland in theire desire of having a conformity of Church Government between the two Nations And as the Parliament hath already taken into consideration the reformation of Church Government so they will proceed therein in due time as shall best conduce to the glory of God and Peace of the Church and of both Kingdomes.*

To theire desire that none may have place about his Majestie and the Prince but such as are of the reformed religion . . . It is answered That his Majestie doth conceive that his subjets of Scotland have no intention by this proposition (especially by way of demand) *to limit or prescribe unto him the choice of his servants but rather to shew theire zeale to religion wherein his owne piety will make him doe therein that which may give just satisfaction to his people.* (9th June, 1641.) This demand, with limitation to the person of the heir apparent, was again repeated, but rejected, reference being made to the former answer.

In the approaching Scottish parliament an act of pacification and oblivion is to be passed, but its benefits are not to extend to any of the Scottish prelates.

quitted the chamber on the 27th of December, 1641. On the 29th the archbishop of York and eleven bishops drew up a protest, declaring that all resolutions which the upper house had already passed or might thereafter pass during their enforced absence, were void and of no effect.[38] As a consequence of this action they were impeached by the commons of high treason, on the ground that their protest involved an attempt to put themselves forward as a separate estate of parliament. Their arrest was immediate (30th December, 1641). The lords now accepted a bill (5th February, 1642) by which all the temporal power of the clergy, especially the right of the bishops to vote in the upper house, was abolished. To this also the king finally gave his assent.[39]

In the beginning of January, 1642, Charles had endeavoured without success to secure the apprehension of the leaders of the parliamentary opposition. From that time parliament and king began to arm for the coming struggle. The open breach is marked by the resolution of parliament on the 2nd of March to put the country in a posture of defence and by the declaration of the king on the 15th March, forbidding obedience to any ordinance of parliament issued without his assent. Soon afterwards the civil war began. At first the contest raged with varying fortunes; then the English parliament turned for help to the Scottish, in which the advanced party had gained the upper hand. The two assemblies formed a compact, binding themselves to establish in the three kingdoms unity of religion after the pattern of the best reformed churches. The Scots marched into England. In the course of the years 1644 and 1645 the king's troops were several times defeated and at last only held their ground in a few places. Charles, seeing that he could not much longer escape capture, betook himself to the Scottish camp. From this moment he was virtually a prisoner.

In the London parliament, from which the king's adherents gradually withdrew,[40] the advanced party had by the end of 1642 obtained undisputed mastery. Even the members who did not desire ecclesiastical innovations were compelled to acquiesce in them, for it was only upon condition of such changes that the Scots would afford their assistance. Accordingly, parliament now pronounced in

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[38] The protest is printed in Rushworth, *Hist. Collections* pt. III vol. I p. 466.

[39] 16 sq. *Car. I* c 27 *An Act for disinabling all persons in Holy Orders to exercise any temporall jurisdiction or authoritie.*

s 1: . . . *that no Archbishop or Bishop or other person that now is or hereafter shall be in Holy Orders shall at any time after the* 15*th* . . *Febr.* . 1641 *have any Seat or place suffrage or Voice or use or execute any power or authority in the Parliament of this Realm nor shall be of the Privy Councell of his Majestie his heires or successours or Justice of the Peace of Oyer and Terminer or Goal Delivery or execute any temporall authoritie by vertue of any Commission but shall be wholly disabled and be uncapable to have receive use or execute any of the said Offices Places Powers Authorities and things aforesaid.*

[40] In December, 1643, the king summoned the members who were loyal to him to Oxford, to form a parliament there. Rushworth, *Hist. Collect.* pt. III vol. II p. 559, gives the summons.

favour of an alteration of the constitution and doctrine of the English church in the sense of a closer approximation to the doctrine and constitution of the church of Scotland and other reformed churches. For the preliminary discussion of the details a parliamentary ordinance of June the 12th, 1643, called an assembly of clergy and members of both houses.[41] This assembly met at Westminster on the 1st of July, 1643. In September the English parliament adopted the covenant.[42] Beginning at the end of 1644 it appointed commissions of presbyters with power to ordain instead of bishops.[43] An ordinance of the 3rd of January, 1645, forbade the use of the existing prayer-book and introduced a liturgy prepared by the Westminster assembly, the 'directory for the public worship of God,' which was soon afterwards adopted in Scotland.[44] Against Laud, who had remained in prison,[45] the proceedings in impeachment before the house of lords began in the early part of 1644. But ultimately his condemnation was by bill of attainder, which, however, did not receive the royal assent. He was executed on the 10th of January, 1645. In the early part of 1646 and later in the year ordinances were issued for the carrying out in England of the presbyterian scheme of government.[46] The episcopal con-

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[41] Ordinance of 12th June, 1643 (in Scobell, *A Collection of Acts and Ordinances etc.*). *For the calling of an Assembly of Learned and Godly Divines, to be consulted with by the Parliament, for the setling of the Government of the Church.*

. . . and whereas it hath been Declared and Resolved by the Lords and Commons assembled in Parliament, That the present Church Government by Archbishops, Bishops, their Chancellors, Commissaries, Deans, Deans and Chapters, Archdeacons, and other Ecclesiastical Officers depending upon the Hierarchy, is evil, and justly offensive and burthensome to the Kingdome, a great impediment to Reformation and growth of Religion, and very prejudicial to the State and Government of this Kingdome, and that therefore they are Resolved that the same shall be taken away, and that such a Government shall be setled in the Church, as may be most agreeable to Gods Holy Word, and most apt to procure and preserve the Peace of the Church at home, and nearer Agreement with the Church of Scotland, and other Reformed Churches abroad; . . .

Definite persons are summoned for 1st July, 1643 *. . . to confer and treat amongst themselves, of such matters and things touching and concerning the Liturgy, Discipline and Government of the Church of England, or the vindicating and clearing of the Doctrine of the same from all false aspersions and misconstructions as shall be proposed unto them by both or either of the said Houses of Parliament . . .*

[42] Upon the covenant see § 10, note 41. [43] Compare § 15, note 12.

[44] Compare § 15, note 14.

[45] By a parliamentary ordinance of 10th June, 1643 (in Scobell, *l.c.*) Laud, until his trial for high treason should be settled, was suspended, because he had not, according to an ordinance of 17th May, 1643, collated upon a person nominated to him by the parliament a certain rectory in his patronage; besides the suspension, all his temporalities were sequestered.

[46] Resolution of 19th August, 1645, ordinances of 20th February, 14th March, 1646 (these ordinances are printed in Rushworth, *Hist. Coll.* pt. IV vol. I p. 224. According to Neal, *Hist. of Puritans* Ed. 1822 III, 249 the ordinance carried in the house of commons on the 14th March was passed in the house of lords only on the 6th June. Compare also the apparently identical ordinance, mentioned by Scobell under the 5th June with the title *For the present setling without*

stitution of the church, as it existed in England and Wales, was declared on the 9th of October, 1646, to be abolished, the property of the bishoprics being confiscated in favour of the state.[47] At the end of 1646 the Westminster assembly formulated a new confession of faith.[48] The ordinances of the 29th of January and the 29th of August, 1648, set forth definitive regulations for establishing the presbyterian scheme in the English church.[49]

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further delay, of the Presbyterial Government in the Church of England); ordinance of 28th August, 1646 *For Ordination of Ministers by the Classical Presbyters within their respective bounds, for the several Congregations within the Kingdom of England* (statement of contents in Scobell, *l.c.*).

[47] Ordinance of 9th Oct. 1646 (in Scobell, *l.c.*) *For the abolishing of Archbishops and Bishops within the Kingdom of England, and Dominion of Wales, and for setling of their Lands and Possessions upon Trustees, for the use of the Commonwealth: . . . it is Ordained by the Lords and Commons in Parliament assembled, and by the authority of the same; That the Name, Title, Stile, and Dignity of Archbishop of Canterbury, Archbishop of York, Bishop of Winchester, Bishop of Duresme, and of all other Bishops of any Bishopricks within the Kingdom of England and Dominion of Wales, be from and after the fifth day of September . . .* 1646 *wholly abolished and taken away, and are hereby abolished and taken away.* All lands, rights to tithes, rights of patronage etc. were transferred to trustees, to be administered and disposed of as parliament should direct.—In the following years numerous ordinances were issued to regulate more closely the administration and sale of the confiscated property.

[48] Compare § 16, note 21.

[49] Ordinance of 29th Jan. 1648 (in Scobell, *l.c.*) *For the speedy dividing and setling the several Counties of this Kingdom into distinct Classical Presbyteries and Congregational Elderships.* The counties are to be divided, subject to the approval of the 'committee of lords and commons for judging of scandal,' into presbyteries and the clergy severally assigned to the proper presbytery. The classical presbyteries are to constitute in their several districts congregational elderships. The above named committee shall have powers to fix the boundaries for provincial assemblies and to increase at will the number of delegates sent to any provincial assembly.

Ordinance of 29th August (in Scobell, *l.c.*) *The Form of Church Government to be used in the Church of England and Ireland, agreed upon by the Lords and Commons assembled in Parliament, after Advice had with the Assembly of Divines: "Be it Ordered . . . That all Parishes and places whatsoever within the Kingdom of England and Dominion of Wales (as well priviledged places and exempt Jurisdictions as others) be brought under the Government of Congregational, Classical, Provincial, and National Assemblies; Provided that the Chappels or places in the Houses of the King and his Children, and the Chappels or places in the Houses of the Peers of this Realm, shall continue free for the exercise of Divine duties to be performed according to the Directory and not otherwise."* Elders shall be forthwith chosen in all congregations. The province of London is divided into twelve *classical elderships.* The counties too are to be divided into *classical presbyteries.* The latter can constitute *congregational elderships*, 'where a competent number of persons . . . qualified for elders' shall be found. Where seven *congregational elderships* are founded within a *classis*, the delegated elders (two to four for each *congregational eldership*) and the minister shall meet together and thenceforth execute all power belonging to a *classis.* Every *classis* chooses from among the ministers of the Word a moderator, who continues in office until the next meeting. The provincial assemblies are to consist of delegates (at least two ministers and four ruling elders from each) sent from every *classis* in the province. The national assembly consists of members sent by the provincial assemblies, each of which supplies two ministers and four ruling

With the king, who was in the Scotch camp, the parliament had in the year 1646 again opened negotiations. But he declined to give his assent to a permanent abolition of episcopacy, and refused, moreover, his approval to other demands of parliament. Upon this the latter made a contract with the Scots, who, on receipt of the arrears of their subsidy, quitted the country and delivered the king up to the English parliament.

Dissensions now arose in England between parliament and the army. With regard to church matters the majority of the house were of presbyterian convictions; the army, on the other hand, with Cromwell, ranged itself on the side of the independents, a protestant sect descended from the Brownists or Barrowists[50] of Elizabeth's day, who had been called into existence by ecclesiastical repression of progressive tendencies. The essential principle of the independents was that they repudiated every form of central church government, presbyterian no less than episcopal, as leading to tyranny, and ascribed to 'every particular congregation' the right of making its own laws independently of every other. The only foundation of belief they recognized was the Bible.

The struggle between parliament and army induced a second civil war. The soldiery, by a *coup de main* (3rd June, 1647) possessed themselves of the king's person, and general Fairfax occupied London. The attempt of the officers, including Cromwell, to make peace with Charles on moderate terms, was rendered nugatory by the more radical section of the army; whereupon Cromwell and other officers joined common cause with the advanced party, which also gained temporary ascendency in parliament. The former partisans of the king and the presbyterians now combined in England to oppose the army, whilst the Scots also took the field to support the league. But the army proved strong enough to suppress every rising; the Scots were defeated by Cromwell, who, aided by a revolt of the advanced party in Scotland, subjugated the whole country. Meanwhile the English parliament, in which the moderates had again obtained preponderating influence, had opened negotiations with the king for peace. When, however, the commons, in opposition to the demands of the army, resolved on the 5th of December, 1648, that Charles's concessions[51] were calculated to serve as a basis for the restoration of peace, the leaders of the army,

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elders, while each university sends 'five learned and godly persons.' The rights of the several assemblies are defined. All may call witnesses and summon offenders before them and inflict ecclesiastical punishments. The *classical assemblies* have, among their functions, to ordain ministers for the several congregations. Then follow the various rules for ordination issued at the suggestion of the Westminster assembly. Amongst other conditions, the candidate must bring with him a testimonial that he has taken the covenant. Ordination is by the laying on of hands.

[50] So called from their founder Robert Browne, or one of their leaders Henry Barrow or Barrowe.

[51] He had agreed, amongst other things, to the provisional sale of church lands, to the suspension of episcopacy, and the introduction of presbyterianism for three years.

on the 6th and 7th of December, caused forty-seven members to be arrested and excluded ninety-six others from participation in the sittings of the house. The remaining members, some eighty in number, belonging to the advanced party, continued the deliberations, and formed what was known as the 'rump parliament.' Those who were left of the lower house decided on the 1st of January, 1649, that the king should be put on his trial for high treason. The upper house, however, unanimously rejected the proposal to proceed against him. The answer of the commons was to declare that they, as chosen representatives of the people, did not need the concurrence of the peers. The king was brought before a tribunal specially constituted by the lower house, found guilty and, on the 30th of January, 1649, executed. Further resolutions pronounced monarchy and the house of lords abolished,[52] and England a free state 'to be governed as a commonwealth by the supreme authority of this nation, the representatives of the people in parliament.'[53]

For the next ten years political power remained in the hands of the independents. After the expulsion of the rump (20th April, 1653) the 'commonwealth' passed into a military dictatorship under Cromwell. Repeated attempts to restore representative government were made, but all failed because those in power were only supported by a minority in the country, and yet refused to surrender the direction of the state.[54]

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[52] Compare especially the following ordinances (in Scobell, *l.c.*):—

30th Jan. 1649. Inhibition against proclaiming Charles Stuart, commonly called the prince of Wales, as king of England, Ireland or any of the dominions belonging to them, without the consent of the people in parliament first had.

9th Feb. 1649. Oaths of allegiance, obedience and supremacy abolished.

17th March, 1649. Abolition of the kingly office for England, Ireland and the dominions belonging to them.

19th March, 1649. House of peers done away with.

[53] Ordinance of 19th May, 1649 (in Scobell, *l.c.*).

[54] In connexion with constitutional forms from 1649–60 the following dates may be noted:—

1. Rump parliament, 6th Dec. 1648 to 20th April, 1653.

2. Dictatorship of Cromwell, in which, however, the civil and the military power remained essentially distinct. He summoned an assembly (members from the several counties, those of Scotland and Ireland included, named by the council of officers); this assembly, the 'Barebone parliament,' regarded itself as a parliament. In accordance with its resolutions, by ordinance of 24th August, 1653 (Scobell, *l.c.*) civil marriage was introduced as the obligatory form. The assembly, moreover, voted the abolition of church patronage and of tithes not yet vested in private owners; ordinances to this effect were not issued; Cromwell opposed the resolutions; induced by him a part of the members on 12th Dec. 1653 decided not to continue their sittings; the few remaining were expelled by the soldiery.

3. Cromwell took the title of lord protector, 16th Dec. 1653; in accordance with the 'instrument of the army' the civil and the military power were combined. Down to 2nd Sept. 1654 the protector issued ordinances without the assent of parliament. For Sept. 3rd he summoned an elected parliament, but dissolved it owing to its attitude of opposition, 22nd Jan. 1655. He called a second parliament for 17th Sept. 1656, but dissolved it, for the same reason as the last, on 4th Feb. 1658. The parliaments of 1654 and 1656 did not acknow-

A presbyterian constitution of the church, which from 1642 the long parliament had laboured to introduce, had, owing to the resistance of the episcopalians on the one hand, of the independents on the other, only been realized in certain parts of the country. With the supremacy of the independents, so much of the structure as had been raised fell gradually to ruin. The demolition of episcopacy was completed by an ordinance of the rump parliament on the 30th of April, 1649, which abolished chapters and all offices in connexion with chapters, as also the office of archdeacon, and placed at the disposal of the state all property which had pertained to the offices and corporations so abolished.[55] No other form of church government was for the time being established. Not until Cromwell's ordinance of the 20th of March, 1654, was a central state commission organized to approve and admit the nominees of patrons as ministers of the several congregations.[56]

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ledge the Barebone parliament as a parliament. But by act of the parl. of 1656 c 10 all the more important ordinances between 20th April, 1653 and 3rd Sept. 1654 were confirmed, in some cases with alterations. Cromwell died on 3rd Sept. 1658. He was succeeded by his son.

4. Richard Cromwell summoned a parliament; but dissolved it (22nd April, 1659) under pressure from the army, and himself abdicated.

5. The rump parliament back, 7th May—13th Oct. 1659. On Oct. 11th it declared all acts and ordinances since its dissolution null and void.

6. The army holds the mastery.

7. The rump. 26th Dec. 1659—21st Feb. 1660. At Monk's suggestion the ejected members resumed their places.

8. Long parliament again sitting, from 21st Feb. 1660.

9. Convention parliament, which met 25th April, 1660, recognized Charles II as king. By 12 *Car. II* (1660) c 1 this parliament was declared a regular one, although not summoned by the king. The parliament was, after many provisional enactments, dissolved by the king.

10. By act of the new parliament (opened 8th May, 1661) 13 *Car. II* (1661) st. 1 c 7, all acts from 25th April, 1660, were confirmed. Single enactments were expressly confirmed by the act just mentioned and by c 11. The ordinances issued without royal assent were pronounced void by 13 *Car. II* (1661) st. 1 c 1 (cf. below, note 67).

[55] Compare § 37, note 25. The confiscation of livings was proposed in the Barebone parliament, but rejected by a narrow majority. Perry, *Hist. of Engl. Ch.* II, 477, note 1 c 31 § 2.

[56] Ordinance of 20th March, 1654 (in Scobell, *l.c.*) *Commissioners appointed for Approbation of Publique Preachers.* Whereas for some time past *weak, scandalous, popish and ill-affected persons* have intruded themselves, for the future only those are to have a benefice with care of souls or a lecture with a constant stipend annexed who, after presentation, nomination, choice etc. by the patron, are approved and admitted by commissioners thereto appointed. Persons appointed to benefices or lectures since 1st April, 1652, also require approbation and admittance from the commissioners. Admittance is not a sacred setting apart for the ministry. The lord protector, by advice of his council or of parliament if sitting, shall nominate others to fill the places of commissioners removed by death etc. If a patron does not present in six months, the presentation devolves by lapse on the lord protector. In case of vacancy the commissioners may sequester the income, to pay therefrom a preacher. The commissioners are to demand a testimonial, signed by three persons, one a preacher of the gospel, 'touching the godly and unblameable conversation' of the presented. The penalties fixed by 13 *Eliz.* (1571) c 12 for not subscribing or reading the thirty-nine articles or for not producing the

The independents were not strong enough to introduce, without immediate danger to their political position, that full religious toleration which was in keeping with their principles. Nevertheless, a large part of the earlier penal legislation was made objectless by the abolition of oaths of allegiance, obedience and supremacy (ordinance of 9th February, 1649); a further part was cancelled by the repeal of statutory enforcements of attendance at church (ordinance of 27th September, 1650).[57]

Against the papists, however, certain penal enactments remained in force; moreover, new provisions, corresponding to those just repealed, were by degrees promulgated.[58]

With respect to the adherents of the protestant episcopalian church, the prohibition laid down under presbyterian domination against the use of the episcopal prayer-book in parish churches was not withdrawn under that of the independents. Proceedings were taken against many of the clergy owing to their political attitude. By ordinances of Cromwell in 1654 it was forbidden to give living or public lectureship with fixed salary to any person (minister) who frequently and publicly used the episcopal prayer-book, and the

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testimonial required in the said act are repealed.—This ordinance was supplemented by Cromwell's of 23rd June and 2nd Sept. 1654 cc 30 and 59. The ordinances of 20th March and 2nd Sept. 1654 are confirmed by act of the parliament of 1656 c 10.

[57] Ordinance of the rump parliament of 27th Sept. 1650 (in Scobell, *l.c.*) *For relief of religious and peaceable people from the rigor of former Acts of Parliament in matters of Religion.* All parts of the acts 1 *Eliz.* c 2, 35 *Eliz.* c 1, 23 *Eliz.* c 1 . . . *and all and every the Branches, Clauses, Articles and Provisos expressed and contained in any other Act or Ordinance of Parliament, whereby or wherein any penalty or punishment is imposed, or mentioned to be imposed or any person whatsoever, for not repairing to their respective Parish Churches, or for not keeping of Holydays, or for not hearing Common Prayer, or for speaking or inveighing against the Book of Common Prayer, shall be and are by the authority aforesaid, wholly Repealed and made void.* But the ordinances of the parliament then sitting as to the observance of Sundays and days of thanksgiving and humiliation remained untouched. Every one was to go on Sunday to some place where there was divine service or preaching or the expounding of the scriptures. Otherwise, proceedings would be taken against him for breach of this ordinance.

[58] Compare especially (in Scobell, *l.c.*):—

Ordinance of the rump parliament of 25th Jan. 1650 *For the better ordering and managing the Estates of Papists and Delinquents* (valid for two years).

Ordinance of same of 26th Feb. 1650 *For removing all Papists, and all Officers and Soldiers of Fortune, and divers other Delinquents from London and Westminster, and confining them within five miles of their dwellings, and for Encouragement of such as discover Priests and Jesuits, their receivers and abettors* (valid till 20th March, 1651; prolonged by ordinance of 19th March, 1651, until 1st Nov. 1651).

The ordinances of Cromwell of 20th March and 29th August, 1654 (compare notes 56 and 59) exclude papists from offices in the church.

Act of the Cromwellian parliament of 1656 c 16 *An Act for Discovering Convicting and Repressing Popish Recusants* (in it an oath is imposed aimed at the most important doctrines which separate Roman catholicism from protestantism).

Even under Cromwell a Roman catholic priest was executed (Ranke, *l.c.*).

ejection of such persons from their offices was enjoined.[59] After that, in 1655, a revolt had been quelled, in which churchmen were the chief participants, Cromwell issued a new edict by which the deprived clergy were even removed from private posts as chaplains, tutors or schoolmasters, and forbidden the use of the episcopal prayer-book whether in public or private meeting.[60]

Nor were the sectaries freed from all restrictions. The maintenance of certain 'blasphemous and atheistic' opinions, which had been rendered penal by the long parliament (ordinance of 2nd May, 1648), was still prohibited. Against the utterance of other views couched in religious form, but involving an attack on the existing social order, was directed a resolution of the rump parliament on the 9th of August, 1650.[61] Ministers of condemned opinions were not, according to the protector's decrees of 1654, to be appointed to church offices and, if in such offices, were to be ejected.[62] The leaders of the anabaptists were imprisoned by Cromwell. On the other hand, those sects which did not assail either the existing government or the existing social order, remained unmolested. By a parliamentary resolution, accepted by Cromwell on 25th May, 1657, free exercise of religious worship and the right to fill offices of state was secured to the followers of all Christian churches, with the exception of papists, the adherents of prelacy and the advocates of 'blasphemous, licentious or profane' doctrines.[63]

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[59] Ordinance of 20th March, 1654 (cf. above, note 56) condemns, among other things, the appointment of persons who are '*scandalous*.' Ordinance of 29th Aug. 1654 *For Ejecting of Scandalous, Ignorant and Insufficient Ministers and Schoolmasters* (in Scobell, *l.c.*) directs the removal of such ministers. By this ordinance scandalous are: the holding of blasphemous and atheistical opinions which are punishable by act of parliament; profane cursing or swearing; the maintaining of those popish opinions which are mentioned in the abjuration oath (ordinance of 19th Aug. 1643); adultery, drunkenness etc.; frequent and public reading of the common prayer-book; publishing disaffection to the government etc.

[60] Ordinance of 24th Nov. 1655 (printed in William Hughes, *An exact abridgment of Publick Acts and Ordinances*, London, 1657) ss 2–5.

[61] Compare upon these ordinances § 19, note 37.

[62] Compare above, note 59.

[63] Printed in Whitelocke, *Memorials* Ed. 1732, pp. 657 ff. c 11. *That the true Protestant Christian Religion, as it is contained in the holy Scriptures of the Old and New Testament, and no other, be held forth and asserted for the publick Profession of these Nations; and that a Confession of Faith to be agreed by your Highness and the Parliament, according to the Rule and Warrant of the Scriptures, be asserted, held forth, and recommended to the People of these Nations, that none may be suffered or permitted by opprobrious Words or Writing maliciously or contemptuously to revile or reproach the Confession of Faith . . . ; and such who profess Faith in God the Father, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, God coequal with the Father and the Son, one God blessed for ever, and do acknowledge the Holy Scriptures of the Old and New Testament to be the revealed Will and Word of God and shall in other things differ in Doctrine, Worship or Discipline, from the publick Profession held forth, Endeavours shall be used to convince them by sound Doctrine and the Example of a good Conversation: But that they may not be compelled thereto by Penalties nor restrained from their Profession, but protected from all Injury and Molestation in the Profession of the*

Upon the death of Oliver Cromwell (3rd September, 1658), the ascendency of the independents soon came to an end. After the failure of intermediate attempts at government, the members of the long parliament returned to their seats, voted a dissolution and ordered new elections. The parliament which then met received a letter from Charles II, promising that thenceforward none should be disturbed for religious convictions if harmless to the state, and that he would approve a bill to that effect.[64] The recognition of Charles as king took place on the 8th of May, 1660. Upon his return all the ordinances issued during the revolution without royal assent and all dispositions based upon them were treated as null and void; nevertheless, by a series of special enactments the greater part of the administrative proceedings of the interim were confirmed.[65]

Faith and Exercise of their Religion, whilst they abuse not this Liberty to the civil Injury of others, or the Disturbance of the publick Peace; so that this Liberty be not extended to Popery or Prelacy, or to the countenancing such, who publish horrible Blasphemies, or practise or hold forth Licentiousness or Profaneness under the Profession of Christ; and that those Ministers or publick Preachers, who shall agree with the publick Profession aforesaid in matters of Faith, although in their Judgment and Practice they differ in matters of Worship and Discipline, shall not only have Protection in the Way of their Churches or Worship respectively; but be esteemed fit and capable, notwithstanding such difference (being otherwise duly qualified and duly approved) of any Trust, Promotion or Employment whatsoever in these Nations, that any Ministers who agree in Doctrine, Worship and Discipline with the publick Profession aforesaid are capable of; and . . . (being otherwise duly qualified) of any civil Trust, Employment or Promotion . . . ; but for such Persons who agree not in matters of Faith with the publick Profession aforesaid they shall not be capable of receiving the publick Maintenance appointed for the Ministry; . . . such Ministers or publick Preachers or Pastors of Congregations . . . are . . . disenabled to hold any civil Employment, which those in Orders were or are disenabled to hold by . . . 16 *sq. Car. I* c 27 . . .

[64] . . . *we do declare a liberty to tender consciences, and that no man should be disquieted or called in question for differences of opinion in matter of religion, which do not disturb the peace of the Kingdom; and that we shall be ready to consent to such an act of parliament, as upon mature deliberation shall be offered to us, for the full granting that indulgence.*

[65] Compare especially:—

12 *Car. II* (1660) c 11 *An Act of Free and Generall Pardon Indempnity and Oblivion.*

s 48: . . . *That noe Conveyance Assurance Grant Bargaine Sale Charge Lease Assignement of Lease Grants and Surrenders by Copy of Court roll Estate Interest Trust or Limitation of any Use or Uses of any Mannours Landes Tenements or Hereditaments not being the Landes nor Hereditaments of the late King, Queene, Prince or of any Archbishops Bishops Deanes, Deanes or Chapters, nor being Landes or Hereditaments sold or given or appointed to be sold or given for the delinquency or pretended delinquency of any person . . . by vertue or pretext of any Act order or ordinance or reputed Act order or ordinance since . . .* 1*st of January* 1641 . . . *shall be impeached defeated made void or frustrated hereby . . .* [The restoration of the lands above excepted was to be, for the most part, without compensation, but with certain qualifications. Under date 7th October, 1660, the king named commissioners—their warrant is in Cardwell, *Doc. Ann.* II, 225—to effect the transference back to crown or church.]

s 49. Nothing in the act shall extend to indemnify those who have entered

But from such confirmation were especially excepted all dealings with the property of bishoprics and chapters. As to the clergy, even those who had not been consecrated by a bishop were left in possession of their livings.

On the 25th of October, 1660, Charles published a declaration in which, having regard to his undertaking already given, he endeavoured in some respects to meet the wishes of the presbyterians and promised a revision of the book of common prayer.[66] The government presented this declaration to be ratified by parliament, but laboured, it would seem, to have the ratification refused, which actually happened. The king, however, in the spring of 1661 summoned a number of episcopalian and presbyterian divines to meet at the Savoy in London. The conference was productive of no result.

Meanwhile a new parliament had been elected. Once more it

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on fabric lands, or possessed themselves of revenues given for the repair of any cathedral or church, or converted church plate and utensils to their private use.

12 *Car. II* c 12 *An Act for Confirmation of Judiciall Proceedings.*

12 *Car. II* c 17 *An Act for Confirming and Restoreing of Ministers.*

s 1. As real and lawful incumbent, parson etc. is recognized, despite non-observance of legal prescriptions, every *ecclesiastical person, ordained by any Ecclesiastical persons*, who is twenty-four years of age, has not renounced ordination, was presented or nominated after 31st Dec. 1641 by some patron to a benefice with cure of souls, vacant at the time, in England or Wales, obtained possession and was in possession on 25th Dec. 1659.

s 4. Every ecclesiastical person or minister, sequestered or ejected after lawful presentation and receipt of the profits, is to be restored to possession on or before the 25th Dec. next approaching, provided that he did not petition to bring king Charles to trial or justify the murder of the said king, and has not declared his judgment to be against infant baptism.

s 10. Those removed from livings etc. are to hold the profits already received.

s 11. Those who petitioned to bring king Charles to trial, have justified his murder or pronounced against infant baptism, are to be removed.

s 14. If a patron presented his clerk to the *Commissioners for approbation of publique preachers* (see above, note 56) or to the Committee for plundered Ministers of 1659, and that clerk was rejected without lawful cause, such clerk is enacted to be ' perfect incumbent of such benefice to all intents and purposes,' unless the patron has since presented another clerk or the clerk originally presented has obtained some other benefice.

s 20. Those restored must take the oaths of allegiance and supremacy.

12 *Car. II* c 31 *An Act for Confirmation of Leases and Grants from Colledges and Hospitalls.*

s 1. Grants, leases etc. made by *de facto* officers of colleges and hospitals between the 25th March, 1642, and the 25th July, 1660, are confirmed, as also are all elections to vacancies by such officers.

s 4. No person shall be confirmed in mastership, provostship, fellowship or chaplaincy in either of the two universities of Oxford or Cambridge or in the colleges of ' Eaton ' and Winchester who is not ordained by bishop or presbyters or who has renounced ordination, if the local statutes of the colleges require ordination as a condition of office.

12 *Car. II* c 33 *An Act for Confirmation of Marriages.*

Marriages made since 1st May, 1642, before a justice of the peace or reputed justice of the peace are confirmed.

[66] Printed in Cardwell, *Docum. Annals* II, 234 ff.

was expressly asserted by legal enactment that the parliamentary ordinances made without the king's assent were null and void.[67] In this parliament, as far as church matters were concerned, the strictly episcopal party enjoyed a decided preponderance. Thus the first business was to recall the concessions to which Charles I had agreed in the early years of the long parliament: the prohibition of the exercise of temporal powers by the clergy, and so the revocation of the bishops' right to vote in the upper house, were cancelled by 13 *Car. II* (1661) st. 1 c 2.[68] By 13 *Car. II* st. 1 c 12 the ecclesiastical courts received back, under the form of an explanation of a previous statute, their regular punitive powers to the extent to which these had been exercised before 1639; the proviso against the *ex-officio* oath remained in force; nor was there any repeal of clauses abolishing the high commission court and forbidding the establishment by commission of any similar court; a reservation of the king's supremacy is appended; lastly, it is set forth that nothing in the act is to be construed as confirming the canons of 1640 or other ecclesiastical laws.[69] By 14 *Car. II* (1662)

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[67] 13 *Car. II* (1661) st. 1 c 1 *An Act for Safety and Preservation of his Majesties Person and Government against Treasonable and Seditious practices and attempts.*

s 2. Whosoever shall maliciously maintain during the lifetime of Charles II that the king is a heretic, or a papist, or that he is endeavouring to introduce popery, shall be punished and shall be disabled from holding any office in church or state. [For a similar provision in the year 1640 see above, note 31.]

s 3. The parliament of 1640 is declared to be dissolved. Affirming that parliament has legislative power without the king, or that anyone is bound by '*Oath Covenant or Engagement*' to endeavour a change of government in church or state is threatened with the penalties of praemunire. It is laid down that the oath called 'the Solemn League and Covenant' was unlawful; *and that all Orders and Ordinances or pretended Orders and Ordinances of both or either Houses of Parliament for imposing of Oathes Covenants or Engagements Leavying of Taxes or Raising of Forces and Armes to which the Royall Assent either in Person or by Commission was not expressly had or given were in theire first creation and making and still are and soe shall be taken to be null and void . . .*

[68] 13 *Car. II* (1661) st. 1 c 2 *An Act for Repeal of an Act of Parliament Entituled An Act for disinabling all persons in Holy Orders to exercise any Temporall Jurisdiccion or Authority*, entirely repeals 16 sq. *Car. I* c 27 (cf. above, note 39).

[69] 13 *Car. II* st. 1 c 12 *An Act for Explanation of a Clause contained in an Act of Parliament made in the seventeenth yeare of the late King Charles Entituled An Act for Repeal of a Branch of a Statute Primo Elizabethe concerning Commissioners for Causes Ecclesiasticall.*

s 1. The part of 16 sq. *Car. I* c 11 s 2 which relates to jurisdiction (cf. above, note 36) is cited: *whereupon some doubt hath beene made that all ordinary power of Coertion and Proceedinges in Causes Ecclesiasticall were taken away . . Be it therefore declared and enacted . . . That neither the said Act nor any thing therein contained doth or shall take away any ordinary Power or Authority from any of the said Archbishops Bishops or any other person or persons named as aforesaid (i.e. vicar general etc.) but that they and every of them exercising Ecclesiasticall Jurisdiction may proceed determine sentence execute and exercise all manner of Ecclesiasticall Jurisdiction and all Censures and Coertions apperteyning and belonging to the same before the makeing of the Act before recited in all causes and matters belonging to Ecclesiasticall Jurisdiction according to the Kings Majesties Ecclesiasticall*

c 4, *An Act of Uniformity*, the exclusive use of the newly revised prayer-book, which, however, had not been altered as the puritans desired,[69a] was prescribed; the act, moreover, declared that all ministers who had been ordained otherwise than by a bishop and who should not obtain episcopal ordination within a short time were *ipso facto* deprived of their offices; whilst further provisions were made to secure the strict orthodoxy of all the clergy of the state church.[70] The terms of this act of uniformity are, apart from

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Lawes used and practised in this Realme in as ample manner and forme as they did and might lawfully have done before the makeing of the said Act.

s 2. 16 sq. *Car. I* c 11 is repealed (*excepting what concerns the High Commission Court or the new erection of some such like Court by Commission*).

s 3. The part of 1 *Eliz.* c 1 s 18 repealed by 16 sq. *Car. I* c 11 is not to be revived by this act.

s 4. Prohibition of the *ex-officio* oath.

s 5: *Provided alwaies that this Act or any thing therein contained shall not extend or be construed to extend to give unto any Archbishopp Bishop or any other Spirituall or Ecclesiasticall Judge Officer or other person or persons aforesaid any power or authority to exercise execute inflict or determine any Ecclesiasticall Jurisdiction Censure or Coertion which they might not by Lawe have done before the yeare of our Lord* 1639 *nor to abridge or diminish the Kings Majesties Supremacy in Ecclesiasticall matters and affaires nor to confirm the Canons made in the yeare* 1640 *nor any of them nor any other Ecclesiasticall Lawes or Canons not formerly confirmed allowed or enacted by Parliament or by the established Lawes of the Land as they stood in the yeare of the Lord* 1639.

[69a] Compare Perry, *Hist. Engl. Church* II, 492 ff. c 32 §§ 12 ff. Tr.

[70] 14 *Car. II* (1662) c 4 *An Act for the Uniformity of Publique Prayers and Administracion of Sacraments and other Rites and Ceremonies and for establishing the Form of making ordaining and consecrating Bishops Preists and Deacons in the Church of England.*

s 1: . . . *all . . . Ministers . . . shall be bound to say . . . all publique and common prayer in such order and forme as is mencioned in the . . . Booke annexed and joyned to this present Act and entituled The Booke of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church according to the use of the Church of England togeather with the Psalter or Psalmes of David pointed as they are to be sung or said in Churches and the forme or manner of making ordaining and consecrating of Bishops Preists and Deacons.*

s 2. Every *Parson Vicar or other Minister*, now in office, . . . *who . . . hath . . . any Ecclesiastical Benefice or Promotion* shall read the morning and evening prayer and publicly declare before the congregation his unfeigned assent and consent to everything contained in the book of common prayer and in the above mentioned supplements to it.

s 3. Whosoever does not do so is *ipso facto* deprived.

s 4. Every person presented in future into a benefice shall do the same within two months after he shall be in actual possession. The penalty of neglect is *ipso facto* deprivation.

s 6. Deans, canons; masters or other heads, fellows, chaplains and tutors of colleges; professors and readers in the universities; parsons, vicars, curates, lecturers and all others in holy orders; schoolmasters and tutors must subscribe a declaration of which the text is given. The penalty for not subscribing is *ipso facto* deprivation. The declaration contains a statement of abhorrence at taking up arms against the king, a promise to conform to the liturgy of the church of England and a denial of the lawfulness and binding force of the covenant.

s 7. Schoolmasters in private houses and tutors in the same need an episcopal licence to teach. Parsons etc. have to procure an episcopal certificate that

trifling changes, still in force at the present day.[71] By its stringent provisions parliament completed that line of demarcation between the state church and the progressive reformers which first began to be drawn in Elizabeth's reign. Moreover, towards the protestant sects already driven from the church and having each its independent constitution, the legislation of the first nine years of this parliament is characterized by extreme intolerance—a natural reaction after the victory of those sects in the revolution.[72] From 1661 to 1679 there was no dissolution. The king, under the pretext of affording some relief to the oppressed sects, endeavoured to arrogate a right of dispensing from the observance of legal enactments, in order to apply that right in favour of the papists. The result was a repetition of controversy upon the same question of constitutional law as had been brought prominently forward under James I and Charles I.[73] Upon his own authority Charles II issued, first in 1662 then in 1672, declarations of indulgence,[74] but in both

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they have signed the declaration and to read the certificate publicly along with the declaration.

s 8. From and after 25th March, 1682, the part referring to the covenant is to be omitted from the declaration.

ss 9–11. Requirement of *episcopal* ordination. For certain offices and acts priest's orders are requisite.

s 13 relates to uniformity in the universities and in the colleges of Westminster, Winchester and Eaton (Eton).

ss 15 ff. contain special provisions for uniformity among *lecturers* (compare § 53, notes 2 and 5).

s 20. Earlier acts of uniformity still in force are to be applied to establishing the *new* prayer-book.

[71] Compare § 15[8].

[72] Cf. especially 14 *Car. II* (1662) c 1 *An Act for preventing the Mischeifs and Dangers that may arise by certaine Persons called Quakers and others refusing to take lawfull Oaths;* 16 *Car. II* (1664) c 4 *An Act to prevent and suppresse seditious Conventicles* (First *Conventicle Act*); 17 *Car. II* (1665) c 2 *An Act for restraining Non-Conformists from inhabiting in Corporations;* 22 *Car. II* (1670) c 1 *An Act to prevent and suppresse Seditious Conventicles* (Second *Conventicle Act*).—Afterwards when the danger threatening all sections of protestantism from the Romanist party at court was evident, the commons passed a bill aimed at a limited toleration of the protestant sects, which, however, was thrown out by the upper house. Perry, *Hist. of Engl. Church* II, 509 c 33 § 16. Compare also Neal, *Hist. of Puritans* Ed. 1822 IV, 432 ff.

[73] Compare above, note 12.

[74] Declaration of 26th Dec. 1662 (printed in Cardwell, *Docum. Annals* II, 260): . . . *So as for what concerns the penalties upon those who (living peaceable) do not conform thereunto through scruple and tenderness of misguided conscience, but modestly and without scandal perform their devotions in their own way, we shall make it our special care so far forth as in us lies, without invading the freedom of parliament, to incline their wisdom at this next approaching sessions, to concur with us in the making some such act for that purpose, as may enable us to exercise with a more universal satisfaction, that power of dispensing, which we conceive to be inherent in us* . . . As against the papists, the king declares that he intends to include them in the toleration and that it is particularly distasteful to him to execute the stringent laws against them, wherein punishment of death is threatened; on the other hand he must maintain the laws which forbid the Roman catholic religion to encroach at the expense of the state church.

Declaration of 15th March, 1672 (printed in Cardwell, *l.c.* II, 282): . . . *we*

instances had to give way before the opposition of the house of commons. Yet whilst James I and Charles I had only aimed at toleration for the Roman catholics in order the better to use their influence against the progressive tendencies within protestantism, Charles II inclined to the Roman catholic faith and desired its toleration only as a step to its enthronement. In 1662 he had married a Portuguese princess who remained a Roman catholic. In January, 1669, he made in private a profession of adherence to the Romish religion; whilst in the following year he concluded a secret treaty with France in which it was left to him to choose his own time for a similar profession in public. His brother, the heir-apparent James, duke of York, formally though at first secretly, went over to the Roman church; this was in the spring of 1672.[74a]

Endeavours to promote popery were vigorously opposed by parliament, and the king found himself compelled to assent to laws by which the papists were excluded more stringently than before from offices in the state or at court, and also from parliament.[75] He dissolved parliament when the commons began to proceed against Danby for high treason. The majority in the newly elected lower house urged the exclusion of the duke of York from the throne. The latter had already, in consequence of the test act, resigned his office as admiral, and so openly acknowledged himself a Roman catholic. Owing to the constant revival of the exclusion bill there were three dissolutions from 1679 to 1681, and Charles ruled in the last years of his reign without a parliament. He died on the 6th of February, 1685, after professing himself, in his last sickness, a member of the Roman catholic church and accepting the services of a Roman catholic priest.

The accession of his brother, James II, was not at first attended

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think ourself obliged to make use of that supreme power in ecclesiastical matters, which is not only inherent in us, but hath been declared and recognised to be so by several statutes and acts of parliament; . . . We do declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical, against whatsoever sort of non-conformists or recusants, be immediately suspended . . . The protestant non-conformists are also allowed the public exercise of worship, royal approval being first had of the place of assembly and of the teacher of the congregation. Roman catholic non-conformists are only permitted to worship in their private houses.

[74a] Report of abbot Falconieri to Altieri, 1674 (quoted in Ranke, *Geschichte*, Analekten, Sect. 2, No. II, Ed. 1872, VIII, 251); before the duke joined the fleet at the breaking out of the war with Holland.

[75] 25 *Car. II* (1672) c 2 *An Act for preventing Dangers which may happen from Popish Recusants.* This is what is known as the Test Act. Besides the taking of the supremacy oath and of the oath of allegiance, the subscription of the following declaration is now for the first time required: *I, A. B., doe declare That I doe beleive that there is not any Transubstantiation in the Sacrament of the Lords Supper, or in the Elements of Bread and Wine, at, or after the Consecration thereof by any person whatsoever.*

30 *Car. II* (1678) st. 2 c 1 *An Act for the more effectuall preserving the Kings Person and Government by disableing Papists from sitting in either House of Parlyament.*

According to s 11 this act is not applicable to the duke of York.

by open opposition in the country. The clergy of the established church had resisted the exclusion bill with might and main, holding fast to the doctrine of the divine right of kings and of the regular descent of the crown in the royal house. True to their principles they at first ranged themselves on the side of James; in the new parliament the advocates of his succession had the majority.

The Monmouth rebellion was quickly suppressed (July, 1685). The king appointed to the army several officers of the Roman catholic faith, dispensing them from making the declarations required by law. On the 9th of November, 1685, in his speech from the throne at the opening of the second session of parliament, he expressly stated this fact. The commons replied with a courteous address in which it was pointed out that dispensation from the provisions of the laws could only be by statute. The king gave an evasive answer, and the commons seemed for the moment appeased. But now the lords raised the same question; it was to be expected that they would take up a still more decided attitude towards the king's pretensions than the lower house. Parliament was prorogued and not again called together; on the 2nd of July, 1687, it was dissolved. To obtain a judicial decision in favour of the dispensing power, the government caused proceedings to be taken against one of the officers appointed in virtue of a dispensation. Changes on the bench ensured a verdict favourable to the king (21st June, 1686). The king now began to make the freest use of the dispensing power. Public exercise of the Roman catholic religion was allowed; the adherents of that faith were appointed in large numbers to offices of state and to commissions in the army; the Roman catholic orders founded settlements in England; a jesuit was made a member of the privy council and obtained a decisive influence over the king's mind. In the summer of 1686 James set up a new high commission court in spite of express statutory prohibition.[76] Lastly, in 1687 he published a general declaration of freedom of conscience, suspending all the relevant penal enactments, remitting all penalties already incurred by offences against those enactments, allowing free exercise of every form of religion, and dispensing with all oaths of supremacy and allegiance, as also with the oaths and declarations prescribed by 25 *Car. II* c 2 and 30 *Car. II* st. 2 c 1.[77] Next year (27th April, 1688) he repeated this declaration,[78] and to complete the humiliation of the established church, in which signs of opposition were now visible, he ordered the clergy of that church to read the declaration from their pulpits. In opposition to this order Sancroft, archbishop of Canterbury, and six of the

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[76] Compare § 30, note 10.

[77] Declaration of 4th April, 1687 (printed in Cardwell, *Doc. Ann.* II, 308): . . . *We . . . have thought fit by virtue of our royal prerogative to issue forth this our declaration of indulgence; making no doubt of the concurrence of our two houses of parliament, when we shall think it convenient for them to meet.*

[78] Declaration of 27th April, 1688 (printed in Cardwell, *l.c.* II, 313). In it the declaration of April 4th, 1687, is repeated verbatim.

bishops addressed a petition to the king, wherein they laid stress on the fact that the dispensing power claimed by the king, on which his declaration rested, had been repeatedly pronounced by parliament to be illegal; they were not inclined to share his responsibility by reading the declaration in their churches; he was therefore prayed not to persist in his demand.[79] The king did not recall his order, but, as a matter of fact, the reading of the declaration took place only in a few churches. The seven bishops were charged with 'contriving, making and publishing a seditious libel,' but acquitted by the jury (30th June, 1688). James now contemplated proceedings before the high commission court against the bishops and against those of the clergy who had not read the declaration; and on the 12th of July the high commission directed that the names of such clergymen should be ascertained.

Up to this time Mary, daughter of James by his first wife and brought up a protestant, had been regarded as the eventual successor to the throne. She had in 1677 married the Statthalter of Holland, William, prince of Orange, also a protestant. The birth of a son to James on the 10th of June, 1688, opened the prospect of a Roman catholic succession to the crown and so of a continuance of the prevailing abuses. William had long had secret communications with the malcontents in England. Believing that the moment had come when the deposition of James might be attempted, he now prepared to invade England. When James received trustworthy news of this (September, 1688) he addressed himself to repair his mistakes; he summoned the bishops to his presence, and by their advice revoked a number of his arbitrary measures. Nevertheless, he could not induce them to declare formally against the prince of Orange. The latter landed in England on the 5th of November, 1688. A number of the troops sent against him deserted to his standard. James found himself compelled to leave the country and fled to France (22nd December, 1688).[79a]

The prince of Orange undertook in the first instance the regency of the country. Resolutions of the parliament which met shortly afterwards declared the throne vacant, and offered William and his wife the royal title. They accepted the crown, February 13th, 1689. Instead of the previous supremacy and allegiance oaths, simpler forms were substituted by statute. According thereto allegiance was now to be sworn to their majesties king William and queen Mary.[80] The stricter party in the established church had,

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[79] The petition is in Cardwell, *l.c.* II, 316; it was presented on the 18th May, 1688.

[79a] The date is that of James's departure from Rochester on his second flight. Tr.

[80] 1 *Gul. & Mar.* sess. 1 c 1 *An Act for removeing and Preventing all Questions and Disputes concerning the Assembling and Sitting of this present Parliament;* c 8 *An Act for the Abrogating of the Oathes of Supremacy and Allegiance and Appointing other Oathes.* Cf. the mention of the same oaths in 1 *Gul. & Mar.* sess. 2 c 2 *An Acte declareing the Rights and Liberties of the Subject and Setleing the Succession of the Crowne,* and the express extension of penal pro-

it is true, favoured the cause of the prince of Orange, but had only desired his appointment to the regency; it still held fast to the doctrine that the order of succession to the crown was immutable. Accordingly, archbishop Sancroft and eight of the bishops, as well as some four hundred of the clergy, refused to take the oath; they were, with some reservations, deprived of their offices. A number of them combined to form the sect of nonjurors, which remained detached from the established church, in politics favoured the return of the Stuarts, and did not ultimately disappear until the beginning of the nineteenth century.[81] As against the papists disqualifying laws were again passed.[82] The obligation to maintain the protestant religion and also such rights of the bishops and clergy 'as by law do or shall appertain unto them,' was incorporated in the coronation oath, and the succession restricted to protestants, even those who married Roman catholics being excluded.[83] As regards protestant sects, 1 *Gul. & Mar.* sess. 1 c 18 (the 'Toleration Act') granted them considerable relief and, in particular, upon condition of their fulfilling certain formal conditions, the right of the free exercise of divine worship.[84] The attempt of the government to produce, by means of a change in the laws touching the established church, a reconciliation between that church and the protestant sects broke down owing to the resistance of the house of commons and of convocation.[85]

The expulsion of James II and the measures, already mentioned, adopted in the first years of the new reign, mark the close of a great chapter in the history of the established church. It had maintained

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visions against Roman catholic recusants to those who refused the new oaths by 7 & 8 *Gul. & Mar.* (1695/6) c 27 *An Act for the better Security of His Majesties Royal Person and Government.*

[81] Lathbury, *History of the Nonjurors.* The sect in 1718 split in consequence of liturgical disputes into the 'Usagers' and their opponents. The greater number of the latter, however, united again in 1733 with the usagers. The last bishop of the united nonjurors died in 1779, the last bishop of the moderates who remained separate, in 1805.

[82] 1 *Gul. & Mar.* sess. 1 c 9 *An Act for the Amoving Papists and reputed Papists from the Cityes of London and Westminster and Ten Miles distance from the same;* c 15 *An Act for the better secureing the Government by disarming Papists and reputed Papists;* c 26 *An Act to vest in the Two Universities the Presentations of Benefices belonging to Papists.* Cf. also the acts cited in note 80.

[83] 1 *Gul. & Mar.* sess. 1 c 6 *An Act for Establishing the Coronation Oath;* 1 *Gul. & Mar.* sess. 2 c 2 *Bill of Rights* s 1 (art. IX, X); both again confirmed in 12 & 13 *Gul. III* (1700/1) c 2 *Act of Settlement.*—The king according to the new coronation oath has first to promise to govern *according to the Statutes in Parlyament Agreed on and the Laws and Customs.* The part of the oath which relates to religion is worded: *Will You to the utmost of Your power Maintaine the Laws of God the true Profession of the Gospell and the Protestant Reformed Religion Established by Law? And will You Preserve unto the Bishops and Clergy of this Realme and to the Churches committed to their Charge all such Rights and Priviledges as by Law doe or shall appertaine unto them or any of them?—All this I Promise to doe.*

[84] *An Act for Exempting their Majestyes Protestant Subjects dissenting from the Church of England from the Penalties of certaine Lawes.*

[85] See more in Perry, *Hist. of Engl. Ch.* II, 543 ff. c 36 §§ 11 ff.

at all points the independent constitution gained at the reformation; it had finally excluded from its camp on the one hand the papists, on the other the advanced protestant sections; and it had secured itself against further intrusion of these alien elements. From this time forth, neither papists nor protestant sectaries could struggle for preponderance *in* the church with the hope of drawing it over to themselves; both were now compelled to build up their own organizations outside the church, to struggle for equality with it, or to dominate it, if they could dominate it, *from without*. Their struggles thus leave from henceforth the constitutional principles of the church untouched; their attacks are directed solely against the privileges enjoyed in the state by the established church.

The protestant sects obtained in the course of the eighteenth century ever increasing toleration; towards the middle of the nineteenth century the restrictions which hampered them were gradually removed. The disabilities of the Roman catholics were long continued. This was especially due to the circumstance that a large part of them joined the foreign foes of England in the attempt to restore by force the Stuarts to the throne. Not until 1829 was a form of civil oath devised (10 *Geo. IV* c 7), upon taking which Roman catholics became eligible for almost all offices of state, as also to sit in parliament. Some of their disabilities had been removed before this act, some were not swept away till later; lastly, some few still remain.[86]

With the middle of the nineteenth century began attempts to wrest from the church its last important advantage—its endowment. The endeavour succeeded in the case of the Irish church, as also in most of the colonies;[87] the disendowment of the Welsh church has many advocates;[88] in England the attack has not yet gained the same strength.

§ 8.

c. Relation of state and church to one another.[a]

In the period from the Norman conquest to the reformation the action of the church upon the monarchy and upon the civil power which the king controlled had been in general of a restrictive character. To weaken the royal authority the church had not infre-

[86] A conspectus of the laws against papists and protestant dissenters from Edward VI onwards, and of the form of their repeal, will be found in Muscutt, *History of Church Laws in England*, London, 1851, pp. 104 ff. Cf. also on modern legislation Gneist, *Engl. Verwaltungsrecht*, 3rd Ed. p. 1060.—On the history of the constitution of the Roman catholic church in England after the reformation see Meyer, *Die Propaganda in England*, Leipzig, 1851.

[87] Compare § 11, note 36 and § 12, note 15.

[88] A bill has been brought in by the government for the disestablishment and disendowment of the church in Wales. In regard to Scotland cf. § 10, note 60.

[a] Gneist, *Engl. Verfassungsgesch.* §§ 31, 33, 47. *Engl. Verwaltungsr.* 3rd Ed. §§ 168, 172–174.

quently, especially since the beginning of the thirteenth century, made common cause with those whose claim was for greater political liberty; and, in return, the latter had allowed the church to win itself new privileges. This grouping of antagonistic forces had somewhat changed when, with the middle of the fourteenth century, parliament attained its full development and when, towards the end of that century, there sprang up in the lollards a sect which aimed at reform not only in the church, but also, in some respects, in the constitution of the state. Parliament no longer needed so urgently the assistance of the church in defending political freedom, and was now constrained to regard the privileges of the church as impairing its own powers no less than those of the king. The church, on the other hand, if it were to resist successfully the attacks of the lollards on its constitution and doctrines, was forced to assure itself of the support of the state. But in seeking that support it did not surrender the principle of independence, and its policy was mainly determined by its own interests. Thus from the end of the fourteenth to the beginning of the sixteenth century, slight friction between the church and the civil power from time to time arose.

In the sixteenth century the reformation robbed the church almost wholly of its independence. The king was now free in filling episcopal sees to ignore the wishes both of the chapters and the pope. Moreover, the preferment at the disposal of the crown was otherwise considerably increased by the confiscation of monastic estates with the rights of patronage attached thereto, and by the reservation of such rights upon the new foundation of secular chapters. The dissolution of the monasteries was the destruction of those centres of ecclesiastical power which until then had been least accessible to royal influence; it operated at the same time to sweep away the ecclesiastical majority in the upper house of parliament. The convocations could henceforth issue binding laws only with the consent of the crown; whereas the crown exercised an uncontrolled right to settle by ordinance the affairs of the church. Appeal lay from the decisions of the ecclesiastical courts to a civil tribunal, whilst in the high commission court the crown set up a judicial body, dependent on its instructions, with punitory powers in matters ecclesiastic. To all this was added, lastly, that general authority to govern the church involved in the idea of the supremacy, an authority which was manifested especially in the visitations carried out under the royal name.

During the struggles of the reformation, parliament and the more advanced reformers had supported the sovereign in the endeavour to destroy the independence of the church. As a consequence of the changes which the reformation produced, the church had now become, as we have seen, largely subject to the crown; the crown, for its part, had gained increased strength, which the Stuarts imagined they could use to the curtailment of the liberties of the citizen. The result in the seventeenth century was a new arrangement of the determinative forces in the state. Partly from regard to the adherents of Roman catholicism, partly to defend its own preroga-

tives, the crown became the champion of the constitution and doctrines of the established church against the protestant sects. The church promoted the objects of the crown by evolving doctrines which were calculated to prepare the way for despotism in England. The opposition had originally, under Elizabeth, only protested against any standing still in religious matters; but when the Stuarts, in order to strengthen their temporal power, took to favouring a retrogressive movement therein, then the resistance of parliament was extended to temporal concerns. As on the one side crown and state church had allied themselves together, so on the other the defenders of political freedom and the advocates of a presbyterian or congregational form of church government combined their forces. Hence in the contests of the seventeenth century political and ecclesiastical considerations are curiously and incessantly interwoven.

Towards the end of the reign of James II the church again asserted its independence of the crown. A part of its clergy made a similar attempt against the new government, refusing to recognize William III as king; as, however, the greater number of the clergy submitted themselves to him, and the nonjurors, excluded from the church, were but lukewarm in defence of their views, the established church presently fell once more into complete subordination to the government. Impulses towards ecclesiastical independence, which survived among the lower clergy, were suppressed by the prorogation in 1717 of convocation, which did not meet again, except as a mere formality, for more than a hundred years. Moreover, at this time, owing to the toleration of all sorts of abuses of patronage, the lower clergy fell into more and more abject dependence on the large landowners, who formed the ruling class in the state. Hence in the eighteenth and the beginning of the nineteenth century the administration of the church was not much more than a branch of the general administration of the state. As such it was largely under the influence of parliament, which gradually became the dominant power in the constitution and determined the changes of party government. But the parties made no endeavour to meddle with the internal administration of the ecclesiastical body politic. Since the church appointments in the gift of the government were for life, and the government, in regard to the majority of the inferior offices, were not in a position to exercise any influence whatever upon the filling of them, party nominations could effect only a very gradual change in the balance between the various schools of thought in the church. The laws admitted to parliament and the offices of state, none but churchmen and members of other protestant societies, the latter commanding a comparatively small number of adherents. Thus the church might be secure that no adverse current in legislature or government would thwart its progress.

A change in this relation of state and church has been preparing from the middle of the nineteenth century. Entrance to parliament and to almost all offices of state was then opened to professors of all

creeds; the exclusively protestant character of state institutions was gone. Simultaneously there awoke in the church, in consequence of numerous internal reforms, a stronger consciousness of self, which caused it to place its own interests in the first line. This spirit of self-assertion led to an attempt to win greater independence of the state. With that object in view the more advanced representatives of the tendency recurred not infrequently to the views of the prereformation time or aimed at *rapprochement* with the present Roman catholic church, alike in liturgy and in dogma. The church of Rome, on its part, sought to gain over completely those who favoured the new departure; one of the clergy of the state church who changed his opinions was made a cardinal, another a cardinal and archbishop of the newly created Roman catholic see of Westminster.

The established church found utterance for those who sought greater independence of the state by means of the revived convocations. In these at the present time the lower house represents, as a rule, the purely church view, whilst the bishops, who form the upper house, having regard to general considerations of state policy, exercise a moderating influence. There are three points in particular in the constitution of the church at which the purely church party directs its attacks. It demands that, the altered composition of parliament being taken into account, state legislation affecting the church should only ensue when the convocations have given their assent or at least been heard.[1] It protests against the continued existence of a final court of appeal in ecclesiastical matters which consists principally of laymen, and repudiates the co-operation of the crown in appointing the judge in the provincial courts. Lastly it requires, as to the appointment of bishops, that a right of proposal or a more extensive right of co-operation should be conferred on the chapters.

Whilst the advanced church party thus aspires to limit the rights of the state in the affairs of the church, the opposite party raises its voice in parliament for cancelling the *duties* of the state towards the church. As then pressure is being brought to bear from *both* sides to sever the connexion between the two, it is not improbable that a gradual development in that direction will take place. Already the church, to assure itself of sufficient means for freer movement, has had to call for voluntary assistance in many ways from laymen. Should the detachment of church from state be further advanced, the counterpoise to purely church tendencies supplied by the present necessity of gaining the co-operation of the civil government will hereafter be found in an increased consultation of the laity. So only could the disestablished church avoid schism and provide itself with the funds necessary for the continuance of its work.

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[1] Compare § 55, note 27.

§ 9.

d. Development of the church constitution internally.[a]

I. Archbishops. The mutual relations of the archbishops of Canterbury and York underwent no change. The loss of the rights which they had exercised in virtue of their legatine capacity was compensated, down to the first revolution, by their appointment to the high commission. Their practice of personally adjudicating in the archiepiscopal court, common down to the reformation, became less and less frequent, until ultimately the presidency was left almost invariably to professional lawyers nominated by them.

II. Bishops and their officers. The number of bishoprics was largely augmented, first under Henry VIII, and then from the middle of the nineteenth century onward.[1] The position of suffragan bishops was regulated anew under Henry VIII; but from the end of the sixteenth century the nomination of such bishops fell into desuetude, and has only been revived in quite recent times.[2] The cathedral corporations which down to the reformation had retained a monastic constitution were by Henry VIII converted into secular chapters.[3] Parliamentary measures of reform, dating from the middle of the nineteenth century, reduced, as far as possible, the inequalities in the incomes of the various archbishoprics, bishoprics and chapters, or rendered the constitutions of the chapters more uniform, whilst a part of the revenues was set aside in aid of parochial cures of souls. Archdeaconries have been gradually multiplied in the present century. The office of rural dean had much sunk in importance even before the reformation. In the course of the sixteenth and seventeenth centuries it became almost everywhere extinct. From the beginning of the nineteenth century it began by degrees to be restored in the several bishoprics, and has now again come to be general in all.[4]

III. Parish priests. The after effects of the appropriations continued to be felt in the insufficiency of the incomes attached to many livings. Appropriated income which, in consequence of the dissolution of the monasteries and the confiscation of their property, passed to the crown, was by it further alienated, in many cases to lay owners; so that it was lost to the parishes. Repeated attempts were afterwards made to recover some part of the appropriated property for the parishes to which it had originally belonged;[5] but a general restitution was never made. At the beginning of the eighteenth century money was obtained for the better maintenance of poor parsons by the transference of an ecclesiastical tax, which

[1] Compare § 33, notes 35, 37–39.
[2] Compare § 39, notes 6 and 7.
[3] Compare § 37, notes 21 and 22.
[4] Compare § 43, note 13.
[5] 2 & 3 *Phil. & Mar.* (1554) c 4 (cf. 1 *Eliz.* cc 4, 19), parl. ordin. of 8th June, 1649 (cf. ordin. of 5th April, 1650, 2nd Sept. 1654 c 49, act of 1656 c 10, 12 *Car. II* [1660] c 11 ss 44, 48).

[a] Gneist, *Engl. Verwaltungsrecht*, 3rd Ed. §§ 169–171, 173, 174.

from reformation times had formed part of the revenue of the crown, to the purposes of a fund for assisting such maintenance.[6] In the eighteenth and in the first half of the nineteenth century the state several times granted considerable sums to be applied in erecting new parish churches and endowing poor livings.[7] Further means of improving livings were procured in the present century by devoting to such purposes part of the property of the bishoprics and chapters[8] and by encouraging private liberality.[9] The payment of tithes in kind or by *modus* was, also in this century, commuted into a rent dependent on the price of corn.[10] The personal exercise of clerical ministrations in cures of souls was gradually obtained by means of permanent parish priests, resident and independent, and especially by means of stricter regulations respecting pluralities and residence,[11] abolition of commendams[12] and sinecures,[13] by means of the more careful enforcement of prohibitions against simony,[14] and by endeavouring to place the ministers of parishes appropriated *quoad temporalia et spiritualia* on the same level, in respect of perpetuity and endowment, as the holders of other parochial cures.[15]

The parish, even after the reformation and for the most part until a quite recent date, formed a unit for both ecclesiastical and secular purposes. The vestry and many parish officers, such as churchwardens, sexton, beadle and parish clerk, united in themselves spiritual and temporal powers.[16] This identity of ecclesiastical and secular administration ceased in respect of a number of parishes (especially in the northern counties) owing to an act of 1662, by which it became allowable to appoint overseers of the poor in smaller districts (townships and villages) of large parishes.[16a] By a series of acts beginning in 1818 (Church Building Acts and New Parishes Acts),

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[6] Compare § 31.

[7] Compare § 31, note 10 and § 32, near notes 1 and 3; also Perry, *Hist. of Engl. Church* II, 577, note 2 c 39 § 1.

[8] Compare § 32, note 13.

[9] Cf. Perry, *Hist. of Engl. Ch.* III, 537 c 33 § 4. According to the *Church Year-Book* for 1893, p. 559, voluntary contributions for church purposes in 1860–84 amounted to £81,500,000, including £21,500,000 for church schools.

[10] 6 & 7 *Gul. IV* (1836) c 71, to which are supplementary 1 *Vict.* c 69, 1 & 2 *Vict.* c 64, 2 & 3 *Vict.* c 62, 3 & 4 *Vict.* c 15, 5 & 6 *Vict.* c 54, 9 & 10 *Vict.* c 73, 10 & 11 *Vict.* c 104, 14 & 15 *Vict.* c 53, 23 & 24 *Vict.* c 93, 36 & 37 *Vict.* c 42, 41 & 42 *Vict.* c 42, 48 & 49 *Vict.* c 32, 49 & 50 *Vict.* c 54.

[11] 21 *Hen. VIII* c 13, 1 & 2 *Vict.* c 106, 13 & 14 *Vict.* c 98, 48 & 49 *Vict.* c 54.

[12] 6 & 7 *Gul. IV* c 77 s 18, 1 & 2 *Vict.* c 106, 13 & 14 *Vict.* c 98.

[13] Compare § 44, near note 22.

[14] Compare especially 31 *Eliz.* (1588/9) c 6, canon 40 of $\frac{1}{1}\frac{6}{8}\frac{0}{6}\frac{4}{5}$, 1 *Gul. & Mar.* sess. 1 (1688) c 16, 13 *Ann.* (1713) c 11 s 2, Perry, *Hist. of Engl. Church* III, 19 c 1 § 23.

[15] Cf. § 44, near notes 20 and 24 ff.

[16] Cf. especially Toulmin Smith, *The Parish . . . with Illustrations of the Practical Working of this Institution in all secular affairs; and of some modern attempts at ecclesiastical encroachment*, 2nd Ed. London, 1857.

[16a] 14 *Car. II* (1662) c 12 s 21. A similar regulation in reference to the repair of highways was made by 14 *Car. II* c 6, an act which, however, remained only a short time in force.

it was rendered possible to divide existing parishes in regard to some or all ecclesiastical purposes, without thereby destroying the parish as a unit for temporal purposes. Thus there arose new ecclesiastical parishes, districts etc. especially in localities where there was a rapid increase of population.[16b] Even where the parochial administration remained identical for spiritual and temporal affairs, a partial separation of the two departments took place by an act of 1868,[17] which allowed the creation of 'Church Trustees,' to administer property for ecclesiastical objects, abolished compulsory church rates and deprived those who refused to pay such rates of the right of voting on the expenditure of them. In 1894 the 'Local Government Act,' 56 & 57 *Vict.* c 73 completely detached (except in regard to the appointment and duties of some unimportant officials, and with certain modifications in the case of small parishes without a parish council) the secular from the ecclesiastical administration in rural parishes, and it became allowable for urban districts also, upon the application of the council or other representative body of any municipal borough or other urban district, to make such detachment by order from the local government board. The act has called into existence, for those parishes to which it applies, new boards to deal with the secular business of the parish; the old parochial officers and bodies retain their former powers but with limitation to ecclesiastical affairs.[17a]

IV. Church assemblies. After the reformation the importance of the convocations slowly declined, partly as a consequence of the extended competence of king and parliament in matters ecclesiastical, partly owing to the restraints imposed upon them by the provisions of the submission act. Their discussions were almost wholly confined to the internal affairs of the church. From the beginning of the eighteenth century they were not permitted by the government to deliberate, and only gradually recovered vitality in the middle of the nineteenth.[18] In recent times two houses of laymen have been established side by side with the convocations, the latter having since the twelfth century consisted solely of

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[16b] The various formations, differing from each other in this or that respect, which arose bore such names as:—*parish for all ecclesiastical purposes; district parish* or *ecclesiastical district; parochial chapelry; district church, district chapelry* or *particular district; separate district for ecclesiastical purposes; new parish for ecclesiastical purposes.* Relevant are especially the following acts:—58 *Geo. III* c 45, 59 *Geo. III* c 134, 3 *Geo. IV* c 72, 5 *Geo. IV* c 103, 7 & 8 *Geo. IV* c 72, 1 & 2 *Gul. IV* c 38, 2 & 3 *Gul. IV* c 61, 1 & 2 *Vict.* c 107, 2 & 3 *Vict.* c 49, 3 & 4 *Vict.* c 60, 6 & 7 *Vict.* c 37, 7 & 8 *Vict.* cc 56, 94, 8 & 9 *Vict.* c 70, 11 & 12 *Vict.* c 37, 14 & 15 *Vict.* c 97, 19 & 20 *Vict.* c 104, 32 & 33 *Vict.* c 94. The essential provisions are brought together in Thomas Brett, *Commentaries on the present laws of England*, 2nd Ed. London, 1891, p. 1156.

[17] 31 & 32 *Vict.* c 109 *Compulsory Church Rate Abolition Act.*

[17a] Cf. § 48, note 16*a*, and Makower, *Die Englische Kirchengemeinde und die Landgemeindeordnung von 1894* in the *Deutsche Zeitschrift für Kirchenrecht* 1894, p. 171.

[18] Cf. § 54.

clergy.[19] Episcopal synods began with the reformation to fall into disuse. A substitute for them has been found in the gatherings of the clergy and laity which are known as diocesan conferences.[20]

§ 10.

2. HISTORY OF THE CONSTITUTION OF THE CHURCH IN SCOTLAND.[a]

CHRISTIANITY was diffused in Scotland from the fifth and sixth centuries partly by British but in greater measure by Irish mis-

[19] Cf. § 56.

[20] Cf. § 57, near notes 12 ff.

[a] I. Sources.

1. Legislation: *The Acts of the Parliaments of Scotland*, 1124–1707; 12 vols. issued by the Record Commission; vols. I to XI, 1814–44, vol. XII, 1875. The appendix to vol. I contains the book called *Regiam Majestatem* and a number of ancient documents; vol. XII contains supplements, documents and the index.

2. Resolutions of councils: Robertson, *Concilia Scotiae. Ecclesiae Scoticanae statuta tam provincialia quam synodalia quae supersunt*, from 1225–1559. Edinburgh, 1886, 2 vols. (The first volume consists of a preface with appendix. This preface treats at length of the history of councils in the prereformation time and of many details of Scotch ecclesiastical history. The appendix contains documents relating to the Scottish church. Vol. II contains the *Statuta*.)—*Acts and proceedings of the General Assemblies of the Kirk of Scotland from 1560 to 1618.* [Between 1618 and 1638 there was no general assembly.] *Publications of the Bannatyne Club*, 3 vols. Edinburgh, 1839–45. [Another edition of the same *Acts and proceedings* is: *The Book of the Universall Kirk of Scotland: wherein the headis and conclusionis devysit be the Ministers and Commissionaris of the particular Kirks thereof, are specially expressed and contained.* Ed. Peterkin, Edinburgh, 1839. Contains in appendices the enactments of the time which refer to the constitution of the church.]—*Acts of the General Assembly of the Church of Scotland, 1638–1842*, reprinted from the original edition, under the superintendence of the Church Law Society, Edinburgh, 1843.

3. Other documents: Theiner, Augustin. *Vetera Monumenta Hibernorum et Scotorum Historiam Illustrantia, . . . ex Vaticani, Neapolis ac Florentiae Tabulariis . . .* Rome, 1864. (Embraces the years 1216–1547.)—The collections of Spelman, Wilkins, Haddan and Stubbs (appendix XIV, I, 1) also extend to Scotland.

II. Church history.

1. Ancient and modern times: Bellesheim, Alphons. *Geschichte der Katholischen* (=Roman catholic) *Kirche in Schottland von der Einführung des Christentums bis auf die Gegenwart.* 2 vols. Mainz, 1883. Translated into English with notes and additions by D. O. H. Blair. 4 vols. Edinburgh and London, 1887–90.—Cunningham, John. *The Church History of Scotland from the Commencement of the Christian Era to the present century.* 2 vols. Edinburgh, 1859; 2nd Ed. 1882. (From the end of the 17th century is chiefly concerned with the presbyterian church.)—Grub, George. *An Ecclesiastical History of Scotland from the Introduction of Christianity to the present time.* 4 vols. Edinburgh, 1861. (Contains the history of the presbyterian and of the episcopal church.)—Luckock, Herbert Mortimer. *The Church in Scotland.* London, 1893. (Abstract of the history of the presbyterian, the protestant episcopal and the Roman catholic church.)—Skinner, John. *An Ecclesiastical History of Scotland from the first appearance of Christianity in that kingdom to the present time.* 2 vols. London, 1788. (Relates especially to the protestant episcopal, but also to the presbyterian church.)—Spotswood (Spotiswood), John, archbishop of St. Andrews. *The History of the Church and State of Scotland, beginning the year . . . 202, and continued to the end of the Reign of King James VI* (1625). 4th Ed. London, 1677. New edition in 3 vols. by M. Russell for the Spottiswoode Society. Edinburgh, 1851.—Stephen, W. *History of the Scottish Church.* vol. I. Edinburgh, 1894 (in progress).—*Story*, Robert Herbert (editor). *The Church of Scotland, past and present.* 5 vols. London, 1890 ff. This work consists of the following treatises: James Campbell (*History of the Church*) . . . *from its foundation to the reign of Malcolm Cranmore;* James Rankin, . . . *from the reign of Malcolm Cranmore to* 1688; T. B. W. Niven, . . . *from* 1688 *to the present time;* Andrew Macgeorge, *The Church in its relation to the Law and the State;* Adam Milroy, *The Church's Doctrine;* Thomas Leithman, *The Church's Ritual;* Andrew Edgar, *The Church's Discipline;* Nenion Elliot, *Teinds or Tithes and Church property in Scotland.*

2 Ancient times: Keith, Duncan. *A History of Scotland; civil and ecclesiastical, from the*

sionaries.[1] The Keltic uses, which deviated from those of Rome, held their ground here until the beginning of the eighth century.[2]

[1] Ninian (*circ.* 411), who is mentioned as converting the southern Picts, was of British nationality but educated at Rome. From 563 the Irish missionary Columba was actively engaged in spreading the church in the west of Scotland. For Columba and other Irish missionaries in Scotland see Haddan and Stubbs, *Councils* I, 116, note.

[2] Compare § 1, note 21.

earliest times to the death of David I, 1153. 2 vols. Edinburgh, 1886. (Vol. I contains the political, vol. II the ecclesiastical history.)—Mac Lauchlan, Thomas. *The Early Scottish Church*; the Ecclesiastical History of Scotland from the first to the twelfth century. Edinburgh, 1865.—Skene, F. William. *Celtic Scotland: a History of Ancient Alban.* Edinburgh, 1876–80. 3 vols. 2nd Ed. 1886–90. (Vol. II contains a full history, with maps, of the church in Keltic Scotland.)—See also appendix XIV, II 3*b*.

3. Reformation and modern times: Calderwood, David. *The History of the Kirk of Scotland.* 1678. New Ed. in 8 vols. Edited for the Wodrow Society by Thomas Thomson. Edinburgh, 1842. (Covers, apart from a short introduction, the years 1514–1625.)—Hetherington, W. M. *History of the Church of Scotland* (the presbyterian) *from the Introduction of Christianity* (fully, only from the reformation) *to the period of the disruption, May 18th, 1843; with an introductory essay on the principles and constitution of the Church of Scotland. Appendices containing the first and second books of discipline, and various historical documents.* 2 vols. 7th Ed. Edinburgh, 1852.—Keith, Robert. *The History of the Affairs of Church and State in Scotland*, 1527–1568. Edinburgh, 1734. 1 vol. New Ed. prepared by John Parker Lawson for the Spottiswoode Society. 3 vols. Edinburgh, 1845.—Kirkton, James. *The Secret and true History of the Church of Scotland from the restoration to the year* 1678; *to which is added an account of the Murder of Archbishop Sharp, by James Russell an actor therein.* Published at Edinburgh, 1817.—Knox, John (the reformer). *The History of the Reformation in Scotland*, in 4 books, covering the years 1494–1564. There is also a fifth book, covering the years 1564–67, first printed in 1644 and probably not by Knox himself. New edition of the five Books in *The Works of John Knox, collected and edited by David Laing* for the Bannatyne Club. Edinburgh, 1846 ff.—Koestlin, Julius. *Die schottische Kirche* (*i.e.* the presbyterian), *ihr inneres Leben und ihr Verhältnis zum Staat, von der Reformation bis auf die Gegenwart.* Hamburg and Gotha, 1852.—Lawson, John Parker. *History of the Scottish Episcopal Church from the Revolution to the present time.* Edinburgh etc., 1843. (Covers the time since 1661, and in more detail, that between 1688 and 1842.)—Row, John. *The History of the Kirk of Scotland from* 1558 *to* 1637; *with a continuation to July*, 1639, *by his son John Row.* Printed for the Wodrow Society. Edinburgh, 1842.—Skinner, John. *Annals of Scottish Episcopacy, from the year* 1788 *to the year* 1816 *inclusive*; . . . Edinburgh, 1818.—*Society for the Liberation of Religion from State Patronage and Control, The Scottish Kirk* (*i.e.* the presbyterian church), *its History and present Position.* London, 1870. (Contains in particular an account of the circumstances at the present day.)—Stephen, Thomas. *The History of the Church of Scotland* (the episcopal) *from the Reformation to the Present Time.* 4 vols. London, 1843–45.—Stevenson, Andrew. *The History of the Church and State of Scotland from the accession of King Charles I to the year* 1649. Edinburgh, 1840.—Wodrow, Robert. *The History of the Sufferings of the Church of Scotland, from the Restoration to the Revolution.* 2 vols. Edinburgh, 1721. Another edition: 2 vols. Glasgow and Edinburgh, 1829, 30.

4. Special: Bannatyne Club, *Origines Parochiales Scotiae, The Antiquities ecclesiastical and territorial of the parishes of Scotland* (ed. by Cosmo Innes, James B. Brichan and others). 2 vols. (vol. II in 2 parts). Edinburgh, 1850–55.—Keith, Robert. *An Historical Catalogue of the Scottish Bishops, down to the year* 1688. *New edition, corrected and continued to the present time.* . . . by M. Russell. Edinburgh, 1824. (Contains also: Keith's *View of the parishes of Scotland before 1688*; John Spottiswoode, *An Account of all the Religious Houses that were in Scotland at the time of the Reformation*; Walter Goodall, *On the first planting of Christianity in Scotland, and on the history of the Culdees.*)—Reeves, William. *The Culdees of the British Islands as they appear in history, with an Appendix of Evidences.* Dublin, 1864. (See on p. 67 of the book a conspectus of literature on the meaning of *Culdeus.*)—Torry, *Synodical Action in the Scottish Church* (the episcopal) in Warren, *Synodalia* 1853 pp. 248, 298, 363, 465, continued in *Journ. of Conv. Cant.* (Ed. *Warren*) 1865 p. 155; 1856 pp. 26, 103; 1857 p. 375.—Walcott, Mackenzie E. C. *Scoti-Monasticon* . . . *A History of the Cathedrals, Conventual Foundations, Collegiate Churches and Hospitals of Scotland.* London, 1874.

See further the list of authorities in the English translation of Bellesheim, pp. xxi ff.

III. Church law.

Gemberg, Aug. Fr. Leop. *Die schottische Nationalkirche, nach ihrer gegenwärtigen und äussern Verfassung.* Hamburg, 1828.—*The constitution and law of the church of Scotland, by a member of the college of justice.* With introductory note by Tulloch. Edinburgh and London, 1884. (A short methodic outline of the present state of the law.)

Missionary enterprise was in the main conducted from monasteries; and from that circumstance arose the custom of investing a number of the clergy with episcopal rank without assigning them definitely limited districts.[2a] It was only in some of the southern, debatable lands and in the islands, which, for the most part, did not yet belong to the kingdoms of Scotland,[3] that separate sees were formed. Soon after king Kenneth had united (843) the two chief parts of what is now called Scotland, the countries of the Picts and the Scots, he fixed on Dunkeld as the ecclesiastical capital of his realm (850).[4] About 906 the seat of the head bishop was removed to St Andrews.[5] The bishop of St. Andrews held the position of a diocesan bishop of all Scotland. He was, however, not the superior of other bishops; nor did he receive a pallium from Rome. The number of diocesan bishops, at first small, was not increased until the beginning of the twelfth century.[6] Consecration of a bishop was, at least in the twelfth century, by one other bishop.[6a]

Queen Margaret, wife of Malcolm III of Scotland, an English princess, was the first to enter into relations with the English clergy, offering submission to the archbishop of Canterbury (between 1070 and 1089).[7] But the archbishop of York—so far as is known, now for the first time—put in a claim to supremacy over the Scottish church, particularly over the bishop of St. Andrews. His title to such supremacy was recognized at the English councils

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[2a] But compare also Loofs, *Antiquae Britonum Scotorumque ecclesiae, quales fuerint mores*, pp. 60, 64, who thinks that the conclusion is justifiable that even at that time bishops with fixed dioceses were to be found in Scotland, although he admits that there existed side by side with them certain bishops without dioceses, performing the functions of abbots or at any rate inhabiting monasteries.

[3] King Alexander III acquired in 1266 the isle of Man and the other islands belonging to the Norwegians in the western sea. This was by treaty with Magnus V of Norway. James III (1460–88) received the Orkneys and Shetlands as a marriage portion with his wife Margaret of Denmark. As to Galloway, see below, note 11; as to the isle of Man, § 33, note 25.

[4] Skene, *Celtic Scotland* 2nd Ed. II, 307.—From the end of the sixth to the beginning of the eighth century Iona had the precedence.

[5] The bishop of St. Andrews, called from the then designation of the kingdom in question [see map in Skene, *Celtic Scotland* 2nd Ed. I, 340] bishop of Alban, is sometimes characterized as *ardepscop* (=prominent bishop. Todd, *St. Patrick* p. 16, note 1). Haddan and Stubbs, *Councils* II, 148, note. Robertson, *Councils* I, 207.

[6] For example, in 1115 were founded the sees of Moray and Dunkeld; before 1119 (according to Skene, *l.c.* II, 375: about 1115) Glasgow, an old see, was resuscitated; about 1125 Aberdeen, before 1130 Ross and Caithness, probably in 1128 or 1130 Brechin (at the end of the 10th cent. there had already been a bishop of Brechin), in 1155 Dunblane was established. Haddan and Stubbs II, 190, 195, 210, 216 (149), 217, 231. Cf. also the, in part different, account in *Acta Sanctae Sedis*, vol. XI p. 12 (Rome, 1878).

[6a] Bull of Calixtus II, 1119, printed in Haddan and Stubbs II, 192.—Compare Loofs, *l.c.* p. 76, who doubts whether the same mode of consecration was used at an earlier period.

[7] Letter of Lanfranc, archbishop of Canterbury (1070 to 1089) to Margaret. Haddan and Stubbs II, 155. At the queen's wish: . . . *De tunc igitur sim pater tuus, et tu mea filia esto.*

held to mediate between Canterbury and York, of Winchester and Windsor (1072).[8] In like manner, the popes also ratified at first the subjection of the Scottish bishops to the archbishop of York. Nevertheless, the Scottish kings did not acquiesce in this transference, made without their assent, of archiepiscopal rights to York[9] but sought, mainly on national grounds, to assert independence of any English prelate. From the side of the Scottish clergy a lasting resistance was also offered to the pretensions of York. Another obstacle to its predominance was found in the jealousy of the archbishops of Canterbury, who endeavoured though in vain to acquire rights of supremacy over Scotland. For a century the struggle continued; sometimes the archbishops of York made good their claim, at others their supposed rights were ignored.[10] At last the popes

[8] Wilkins, *Concilia* I, 325. Council of Windsor: . . . *Subjectionem vero Dunelmensis, hoc est, Lindisfarnensis, episcopi atque omnium regionum a terminis Licifeldensis episcopi et Humbrae magni fluvii usque ad extremos Scotiae fines, . . . Cantuariensis metropolitanus Eboracensi archiepiscopo ejusque successoribus in perpetuum obtinere concessit.* On these councils cf. § 34, notes 5 and 6.

[9] Paschal II in 1101 announces to the bishops of Scotland the translation of Gerard to the see of York: . . . *Unde mandamus praecipientes, ut ei deinceps tanquam vestro Archiepiscopo debitam oboedientiam exhibeatis.* Haddan and Stubbs II, 167. Calixtus II, 1119, writes to the bishops of Scotland that one bishop is not to consecrate another, but that they must go to their metropolitan: . . . *praecipimus, ut nullus deinceps in ecclesiis vestris in Episcopum nisi a metropolitano vestro Ebor. Archiepiscopo aut ejus licentia consecretur. Porro . . . mandamus, ut . . . Turstino in Eboracensem Archiepiscopum consecrato, . . . canonicam oboedientiam deferatis; sicut temporibus Gerardi . . . a . . . Paschale Papa mandatum est.* Haddan and Stubbs II, 192. Similarly Calixtus II, 1122, to king Alexander of Scotland and the Scottish bishops, *l.c.* II, 205; Innocent II, 1131, to the Scottish bishops, *l.c.* II, 217; Hadrian IV, 1155, to the same, *l.c.* II, 231.

[10] The facts to be mentioned in connexion with the struggle are, in particular, the following: Between 1072 and 1093, if we may trust the register of York, a partisan authority, *Foderoch, Scotorum episcopus in sede Sancti Andree* professed subjection to the archbishop of York and his successors. Haddan and Stubbs II, 160. In 1109 Turgot, an Englishman, was consecrated bishop of St. Andrews by the archbishop of York. According to the more credible account the question whether York had a right to the primacy of Scotland or not was reserved. In consequence of disputes with the king Turgot could not perform his functions and had to withdraw, *l.c.* II, 171, 189. On the death of Turgot (1115) Alexander I of Scotland begged counsel and help from the archbishop of Canterbury in determining Turgot's successor, and declared at the same time that he did not account the transference to York in 1072 of archiepiscopal rights as binding. In 1120 the king begged the archbishop of Canterbury to send him Eadmer as bishop of St. Andrews. This was done and Eadmer, after discussions as to the manner of his investiture, took possession of the see. Acting in concert with the archbishop of Canterbury, who was striving to subject Scotland to himself, Eadmer now insisted on having himself consecrated at Canterbury. Alexander's reply was to inform him . . . (*se*) *penitus absolutum ab Ecclesia Cantuariensi, . . . seque in vita sua consensum non praebiturum, ut Episcopus Scotiae subderetur Pontifici Cantuariorum.* Eadmer now resigned the see conditionally and returned to Canterbury. In spite of subsequent concessions by him, Alexander did not recall him, *l.c.* II, 191, 196, 198, 201, 205. In 1124 (probably after Eadmer's death, 1124; but compare appendix XIV, II 1 *c* No. 81) Rodbertus (Robert), prior of Scone, was elected bishop of St. Andrews. A synod held (1125) by the legate John of

yielded to the wishes of the Scotch and pronounced, for the first time in 1188, that the Scottish bishops were immediately subject to the papal see.[11] In 1225, at a synod held by the direct command of pope Honorius III, without the presence of a legate, the Scottish bishops resolved to choose every year, as a substitute for an archbishop, one of their number as a *conservator*; to him was to be assigned the calling of synods, the presidency in them and the

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Crema to settle the dispute between York and the Scottish bishops had no result. Not until 1128 was Rodbertus consecrated by the archbishop of York, *salva querela Ebor. Ecclesiae, et salva justicia Sancti Andreae, l.c.* II, 209, 211, 214, 215. In 1154 pope Anastasius IV ratified the establishment (1148) by a legate of an archbishopric in Trondhjem (Norway), having subject to it the Orkneys and the *insulas Suthraie* (*i.e.* Man and a part of the islands on the west of Scotland). To the two last mentioned sees bishops were frequently consecrated by the archbishop of York, but not without opposition, *l.c.* II, 229. Also, on the resuscitation of the see of Glasgow (about 1115), the archbishop of York consecrated the new bishop (*l.c.* II, 195), and for a time in the twelfth century the bishop of Glasgow acted under the archbishop of York as his superior. In 1165 the Scottish bishops consecrated Richard, bishop of St. Andrews. In the treaty of Falaise confirmed at York, 1175, is the following nugatory clause: *Concessit . . . rex Scotiae . . . et Barones et alii homines sui, domino Regi* (of England), *quod Ecclesia Scotiae talem subjectionem amodo faciet Ecclesiae Angliae, qualem illi facere debet, et solebat tempore Regum Angliae praedecessorum suorum. Similiter Ricardus Episcopus St. Andreae et . . . concesserunt, quod etiam Ecclesia Anglicana illud jus habeat in Ecclesia Scotiae, quod de jure habere debet, et quod ipsi non erunt contra jus Anglicanae Ecclesiae . . . Hoc idem facient alii Episcopi et clerus Scotiae . . .* At the legatine council of Northampton, 1176, the Scottish bishops refused to make the submission to the English church required by the English king, because they had not before been subject. The archbishop of Canterbury here revived his claim to Scotland. In 1176 pope Alexander III, upon representations by the Scottish bishops, forbade the archbishop of York to exercise archiepiscopal powers in Scotland until final decision by the papal see, *l.c.* II, 236–245. In the years 1179–1188 there was a disputed election to St. Andrews. Neither of the candidates was consecrated at York. Ultimately the king of Scotland carried his point against Rome, *l.c.* II, 251 ff.

[11] Clement III to William, king of Scotland: . . . *duximus statuendum, ut Scotticana Ecclesia Apostolicae sedi . . . nullo mediante debeat subjacere; . . . Adjicimus, ut nulli de caetero qui de regno Scotiae non fuerit, nisi quem Apostolica sedes propter hoc de corpore suo specialiter destinaverit licitum sit in eo legationis officium exercere . . .* This bull was probably repeated by Celestine III in 1192, as also by other popes, *e.g.* in 1208 (by Innocent III), in 1218 (by Honorius III). Haddan and Stubbs II, 273, 274, note. For more as to these bulls see Robertson, *Councils* I, 40, note. At the wish of the king of Scotland Innocent IV further laid down (1245): . . . *ut eaedem causae* (disputed church elections) *vel aliae, si quas in eodem regno oriri contigerit, aut etiam examinaciones praedictae* (*electionum*), *extra idem regnum auctoritate Sedis Apostolicae vel Legatorum ipsius committi non valeant. Quas si forsan ab eadem Sede extra idem regnum ex legitima causa committi contingeret, in civitate ac diocesi Eboracensi minime committantur, sed committantur dumtaxat in Karleolensi vel Dunelmensi civitatibus ac diocesibus quae vestris partibus sunt vicinae . . .* The constitutional position of Galloway, a principality lying on the southwestern border of Scotland, was long disputed. The bishops of Whithern, in whose hands the ecclesiastical government of the province was, subjected themselves from the beginning of the twelfth to the middle of the fourteenth century to the archbishop of York. Stubbs, *Const. Hist.* I, 597 c 13 § 158. Raine, Introd. p. xxxviii to *Rer. Brit. Scr.* No. 61.

execution of their decrees.[12] At last in 1472 Scotland received the normal church constitution, St. Andrews being raised to an archbishopric. In 1492 a division was made and Glasgow was erected into a metropolitan see.[13] Its archbishop, however, was not placed in all respects on an equal footing with the archbishop of St. Andrews. Hence arose contentions which lasted until the reformation.[14]

The reformation in Scotland was developed at first in opposition to the government and under the influence of the calvinistic John Knox. The church assumed a presbyterian form: the holders of the spiritual office were presbyters, all of equal rank, and the government passed from the earlier bishops to sessions, presbyteries, synods and the general assembly.

This result was not attained without struggles. The battle lasted for more than a century and falls, as in England, into two sections:

1. The struggle against Rome.

The sect of the lollards had adherents in Scotland as well as England. The rise of Luther led to an increase in the number of those whose endeavour was for reform. In 1525 an act[15] prohibited the introduction of lutheran books. James V (1513–42) supported the Romanists, and declined an invitation from Henry VIII to reconstruct the Scottish church upon the English model. The influence of James's second wife, Mary of Guise (m. 1537), contributed materially to keep his secular and ecclesiastical policy in unison with that of France, and many heretics were burned in his reign.

During the regency of Mary of Guise in the minority of her daughter Mary Stuart (1542–60), the policy of Scotland, in spite of temporary deviations, was governed by hostility to England and the reformation. When Somerset in 1547 revived Henry VIII's scheme of marriage between Edward and the young queen of Scotland, his efforts to promote in this way an union between the countries failed, although supported by force of arms.

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[12] The resolutions run (Wilkins, *Concilia*, Introduction p. 30):—

I. Quod annis singulis unus episcopus communi reliquorum consilio conservator eligeretur, qui de concilio ad concilium suo fungeretur officio, praesertim in concilio provinciali quotannis indicendo auctoritate conservatoria per literas ad singulos episcopos; quibus eos requireret quatenus die et loco praescriptis adessent in habitu decenti, una cum praelatis, id est abbatibus et majoribus prioribus suae dioecesis; nec non cum capitulorum, collegiorum, et conventuum procuratoribus idoneis, decanis, et archidiaconis . . .

II. Quod idem conservator pro tempore concilio praesideret, materias tractandas proponeret, suffragia colligeret, cum maiori et saniori parte patrum concluderet, et decretum interponeret . . .

III. Quod idem conservator pro tempore manifestos ac notorios eiusdem concilii seu alicuius statuti in eodem violatores puniret . . .

[13] Wilkins, Introduction 31. *Acta Sanctae Sedis* (1878), vol. XI p. 14. The bulls are printed in Robertson, *Counc.* I, 110, note 1; 122, note 1; 123, note 1. The detachment of the province of Glasgow by the pope was a consequence of resolutions of the Scottish parliament.

[14] For details see Robertson, *Counc.* I, 122 ff.

[15] No. 4 (*Acta Parl.* II, 295).

John Knox had in 1547 been sent in the galleys to France. Regaining his freedom, he spent some years in England and on the continent of Europe. In 1555, a period of comparative toleration in Scotland allowed him to return there, and to spend some nine months in his native land, preaching and propagating his views.[15a] The first covenant[15b] was signed on the 3rd of December, 1557, by Argyll and other nobles and gentry 'to maintain, set forward and establish the most blessed word of God and His congregation.' The prosecution of a number of protestant preachers before the royal court at Stirling for unlicensed exercise of priestly functions, and their condemnation, *per contumaciam*, as rebels, caused a general outbreak of the reformers. First at Perth under the guidance of Knox,[15c] afterwards almost all over the country 'the monuments of idolatry' were destroyed and the monks driven away (1559). After a short struggle a compromise was agreed to. But the queen regent called in French troops, and refused the demand of the protestant nobility that they should be dismissed. Upon this actual war broke out. At first the protestant nobles, secretly supported by Elizabeth, were at a disadvantage; but when the English queen had openly allied herself with them by the treaty of Berwick, the French were defeated. Upon the death of the queen regent (1560) the war between England and the Scottish government was practically ended by the peace of Edinburgh (1560), although the treaty was never ratified by Mary Stuart.[16] The Scottish parliament which then met approved almost without any dissent a protestant confession of faith, declared papal jurisdiction abolished, repealed the laws which obstructed the reformation, and forbade under penalties the celebration of mass or of baptism in the papal form.[17]

[15a] At one of his ministrations (Easter 1556) those present *band thame selfis, to the uttermost of thare poweris, to manteane the trew preaching of the Evangell of Jesus Christ, as God should offer unto thame preacheris and opportunitie.* Knox, *Hist. of Reform.* Ed. Laing I, 251. On the authority of this passage it has been asserted, that there perhaps was a formal bond resembling later covenants.

[15b] The document is printed in Knox, *l.c.* I, 273.

[15c] Knox reached Edinburgh on his return from Geneva, May 2nd, 1559.

[16] In the draft of the treaty there was nothing laid down as to the exercise of religion.

[17] *Acta Parl.* II, 526–35. No. 1 of 17th August, Nos. 2–4 of 24th August.

No. 1 ratifies a confession of faith, quoted *verbatim.*

No. 2: . . . *that the bischope of Rome haif na Jurisdictioun nor autoritie within this realme in tymes cuming And that nane of oure saides soveranis subiectis of this realme sute or desire in ony tyme heireftir title or rycht be the said bischope of Rome or his sait to ony thing within this realme under the panis of barratrye That is to say proscriptioun banischement and nevir to bruke honour office nor dignitie within this realme.* . . .

No. 3 repeals older laws which would have prevented reformation.

No. 4: . . . *that na maner of persone or personis in ony tymes cuming administrat ony of the sacramentes foirsaides* [baptism and the eucharist] *secreitlie or in ony uther maner of way bot thai that ar admittit and havand power to that effecte and that na maner of person nor personis say messe nor yit heir messe nor be present thairat under the pane of confiscatioun of all thair gudes movable and unmovable and puneissing of thair bodeis at the discretioun of the magistrat.* . . .

Mary Stuart repaired (1561) on the death of her husband Francis II of France (1560) to Scotland, and assumed her royal powers. Her favour was extended in the earliest years of her rule to the protestants, negotiations with Elizabeth being in progress with the object of securing the explicit recognition of Mary as heir to the English crown. When, however, these negotiations broke down, Mary allied herself with pope Pius V and Philip of Spain to suppress protestantism in Scotland and to urge her claims to the throne of England.[18] A series of insurrections now ensued in Scotland, induced by political rather than religious causes. In the course of these disorders the act of April the 19th, 1567, again declared the old laws, temporal or ecclesiastical, which stood in the way of the reformation annulled, and secured the professors of the reformed faith from prosecution for their religious belief.[19] Mary was compelled, by a deed signed the 24th of July, 1567, to abdicate in favour of her son, James VI (born 1566). The acts of the 20th of December, 1567, now confirmed those of 1560, including the confession of faith, acknowledged the reformed church as the one true church in Scotland, embodied in the coronation oath a pledge to maintain it, excluded the papists from public offices except those conferred for life, or those hereditary, and bestowed on the authorities of the church certain rights of jurisdiction in matters of belief or morality.[20]

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[18] Compare § 6, nr. note 52.

[19] 1567 *Mariae* No. 2 (*Acta Parl.* II, 548): . . . *Our said Soverane with the awyse of the haill thre estaites of this parliament, hes thocht neidfull and convenient To dispense case abrogat and annull like as hir Majestie presentlie dispenses cases abrogattis and annullis all and quhatsumevir lawis actis and constitutionis Canone civile or municipale with all uther constitutionis and practik penale Introducit contrar to the foirsaid Religioun and professoures of the samyne.* . . .

[20] 1567 *Jac. VI* (*Acta Parl.* III, 14 ff.).

No. 3 *Anent the abolissing of the Pape, and his usurpite authorite*, confirms the act No. 2 of 1560.

No. 4 *Anent the annulling of the actis of Parliament, maid againis Goddis word, and maintenance of Idolatrie in ony tymes bypast*, confirms act No. 3 of 1560 and the confession of faith of 1560 (No. 1).

No. 5 *Anent the Messe abolischit, and punisching of all that heiris, or sayis the samin*, confirms act No. 4 of 1560.

No. 6 *Anent the trew, and haly Kirk, and of thame that ar declarit not to be of the samin* . . . *the foirsaid Kirk*, is declared to be, *the onlie trew, and haly Kirk of Jesus Christ within this Realme.* . . . Those who speak against the received confession of faith or refuse to partake of the sacraments as they are administered in the reformed church, are decreed to be *na memberis of the said Kirk* . . . *swa long as thay keip thame selfis sa deuydit fra the societie of Christis body.*

No. 7 *Anent the admissioun of thame, that salbe presentit to benefices, hauand cure of ministerie.* The right of patronage is maintained; the superintendent or in the last resort the general assembly to decide as to the admissibility of the presentee.

No. 8 *Anent the Kingis aith, to be geuin at his Coronatioun.* The coronation oath, the substance of which is given, contains a promise to maintain religion as then received.

No. 9 *Anent thame that sould beir publict office heirefter.* Only professors of the reformed faith may be admitted to offices from which they are removable at will, to the office of notary or to that of *a member of Court.*

Mary, assisted especially by the Roman catholic party, again essayed to seize the reins of government; but the attempt miscarried and she fled to England (1568) in the hope of gaining Elizabeth's support against the Scotch. James VI was brought up in the reformed faith. After many disorders during successive regencies, in 1578, whilst still a minor, he resolved to govern for himself. The legislation of 1578 and the following years confirmed the earlier enactments in favour of the reformed church.[21]

2. Struggle between the presbyterians and the protestant bishops.

In the year 1572 a mixed commission, to which a presbyterian assembly and the civil government sent deputies, had resolved that archbishoprics and bishoprics, vacant or becoming vacant, should be filled by protestant ministers, nominated by the government and elected by the chapters, the right of confirmation being reserved to the king; but the prelates so appointed were to be subject to the general assembly, and only to have the right of the previous superintendents.[22] Although Knox (who died later in the

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No. 10 confirms an act of 1561 whereby one-third of the incomes of the benefices are to go to the ministers, the rest to the use of the king.

No. 11. None are to have charge or cure in schools, colleges or universities except such as have been tried by the superintendents or visitors of the church.

No. 12 *Anent the iurisdictioun of the Kirk: . . . The Kingis grace, with avise of . . . grantit iurisdictioun to the said Kirk, quhilk consistis and standis in preicheing of the trew word of Jesus Christ, correctioun of maneris, and administratioun of haly Sacramentis . . . And that thair be na uther iurisdictioun ecclesiasticall acknawlegeit within this Realme, uther than that quhilk is, and salbe within the same Kirk, or that quhilk flowis thairfra concerning the premissis. . . .* Whether further provisions are to be made in respect to jurisdiction, is to depend on the report of a royal commission.

[21] No. 3 of 1578. *Acta Parl.* III, 95. Nos. 6 and 7 of 1579 repeat the provisions of Nos. 6 and 12 of 1567, with inconsiderable alterations. *Acta Parl.* III, 137. No. 1 of 1581 enumerates and confirms the laws in favour of the reformed church. *Acta Parl.* III, 210. No. 2 of 1587 confirms again (upon the king's majority) the laws with regard to the freedom of the church. Nos. 3 and 4 contain penal enactments against the jesuits and seminary priests and against those who spread popish books. *Acta Parl.* III, 429 f.

[22] The resolutions of the commission, ratified by the regent on 1st Feb. 1572, are printed in *Acts and proceedings of Gen. Assembly*, publications of the Bannatyne Club, I, 208 ff. They relate to the constitution of archbishoprics, bishoprics, chapters, collegiate churches, and the non-filling of monastic offices which become vacant. The first and fundamental article runs:—

Anent Archebishoprikkis and Bischoprikkis.

It is thocht, in consideratioun of the present state, That the names and titillis of Archebischoppis and Bischoppis are not to be alterit or innouat, nor yit the boundes of the Dioceis confoundit; bot to stand and continew in tyme cuming, as thay did befoir the reformatioun of religioun; at leist, to the Kingis Majesties maioritie, or consent of Parliament.

That personis promovit to Archebischoprikkis and Bischoprikkis be, safar as may be, indewed with the qualiteis specifeit in the Epistlis of Paule to Timothe and Tytus.

year) supported the resolutions of the mixed commission in a letter addressed to the general assembly,[23] the zealous presbyterians raised immediate opposition to their execution. The general assembly only accepted them as temporary, and desired above all the abolition of the titles borrowed from prereformation times. Nevertheless, the government proceeded to give effect to the resolutions. But the general assembly of April, 1578, forbade chapters until its next meeting to make any election to bishoprics which might become vacant, and the next assembly of June, 1578, rendered the injunction perpetual. The assembly of 1580 voted the immediate abolition of the episcopal office. Resolutions in 1578 and 1581 furthermore adopted the 'second book of discipline' as the foundation of church polity. In this treatise the assumption by the sovereign of the title 'head of the church' is denounced; moreover, it is laid down that in ecclesiastical matters the person of the civil magistrate is subject to the spiritual authorities, and that it is not admissible, as a general rule, to combine temporal and spiritual power in one person.[24] All these resolutions were ignored by the government and a new bishop was appointed. Upon this issue a quarrel arose between the king and the church. The raid of Ruthven placed the presbyterians for

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That thair be a certane assembly or cheptoure of learnit ministeris annext to every Metrapolitan or Cathedrall seatt.

To all Archebischoprikkis and Bischoprikkis vacand or that sall happin to vaik heirefter, personis qualifeit to be nominat within the space of yeir and day eftir the vacance; and the personis nominat, to be 30 yeirs of age at the leist.

The Deane, or failyeing the Deane, the nixt in dignitie of the Cheptoure, during the tyme of the vacance, salbe Vicar generall and use the jurisdictioun in spiritualibus as the Bischop mycht have usit.

All Bischoppis and Archebischoppis to be admittit heirefter, sall exerce na farther iurisdictioun in spirituall functioun nor the superintendentis hes and presently exerces, quhill the same be agreit upoun; and that all Archebischoppes and Bischoppis be subiect to the Kirk and Generall Assembly thairof in spiritualibus, as thay ar to the King in temporalibus; and haif the advise of the best learnit of the Cheptoure, to the nowmer of sex at the leist, in the admissioun of sic as sall have spirituall functioun in the Kirk; as alsua that it be lauchfull to als mony utheris of the Cheptoure as plesis, to be present at the said admissioun, and to voit thairanent.

The general assembly of August, 1572, framed a protest to the effect that they regarded the rules of the mixed commission as for an interim only; at the same time it expressed a wish that the titles of archbishop, dean, archdeacon, chancellor and chapter, in particular, should be changed (*l.c.* I, 246).

The presbyterians dispute that the assembly of Leith, January, 1572, which sent members to the commission, was a regularly summoned general assembly. Compare Hetherington, *Hist. of Church of Scotland* I, 138 ff.—Ranke, *Engl. Geschichte* 3rd Ed. II, 6 asserts that the resolutions were confirmed by parliament in January, 1573. But no such confirmation is discoverable in the *Acta Parliamentorum.*

[23] The letter is printed in *Acts and proceedings of Gen. Assembly*, *l.c.* I, 248.

[24] c 1 No. 6: *It is a title falslie usurpit be Antichrist, to call himselfe heid of the Kirk*, . . . No. 9: *Notwithstanding, as the ministeris and uthers of the ecclesiasticall estait ar subject to the magistrat civill, so aucht the person of the magistrat be subject to the Kirk spiritually, and in ecclesiasticall government. And the exercise of both these jurisdictiones cannot stand in one person ordinarlie* . . .

a time in the ascendency. When, however, the former government was restored, the acts of May, 1584, declared the king supreme over all persons, spiritual as well as temporal, and made the holding of all assemblies dependent on his consent; every attack on the prelates as a part of parliament was pronounced to be treason; and on the bishops was bestowed the right of exercising powers of visitation and disciplinary powers within their dioceses and of receiving, along with other commissioners, all presentations to benefices.[25]

As against the Roman catholics, the church again summed up its doctrines in a solemn confession of faith, which was signed by the king (1581). This confession of faith was likewise designated a covenant.

When the Spanish invasion was impending, James and Elizabeth concluded the league of Berwick (1586) for the defence of the religion practised in England and Scotland against every assailant.[26]

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[25] Acts of 22nd May, 1584 (*Acta Parl.* III, 292 ff.):—

No. 2: . . . *our soverane lord and his thrie estatis assemblit in this present Parliament ratefeis and apprevis and perpetuallie confirmis the royall power and auctoritie over all statis alsweill spirituall as temporall within this realme . . . And . . . That his hienes, his said aris and successouris be thame selffis and thair counsellis ar and in tyme to cum salbe Juges competent to all personis his hienes subiectis of quhatsumevir estate degrie, functioun, or conditioun that ever they be of, spirituall or temporall, In all materis quahairin they or ony of thame salbe apprehendit, summound or chargeit to answer to sic thingis as salbe inquirit of thame be our said soverane lord and his counsell;* . . . None shall decline the royal judgment under pain of treason.

No. 3. None shall impugn the dignity and authority of the three estates of parliament under pain of treason. [The bishops are thus secured.]

No. 4: . . . *our soverane Lord and his thrie estatis assemblit in this present parliament dischargeis all Jugementis and Jurisdictionis spirituall or temporall accustomat to be usit and execute upoun ony of his hienes subiectis, quhilkes ar not approvit be his [hienes and his saidis thrie] estatis [convenit] in Parliament, and be allowit and ratefeit be thame; . . . And . . . That nane of his hienes subiectis of quhatsumever qualitie, estate or functioun they be of, spirituall or temporall presume or tak upoun hand to convocat, convene or assemble thame selffis togidder for halding of counsellis, conventionis or assembleis To treat, consult and determinat in ony mater of estate, civill or ecclesiasticall (except in the ordinare Jugementis) without his maiesties speciall commandement, expres licence had and obtenit to that effect, under the panis ordinit be the lawis and actis of Parliament aganis sic as unlawfullie convocatis the Kingis liegeis.*

No. 20: . . . *That patrik Archiebischop of sanctandrois and utheris the bishopis . . . with sic utheris as salbe constitute the Kingis maiesties Commissionaris in Ecclesiasticall causes Sall and may direct And put ordour to all materis and causes ecclesiasticall within thair dioceises viset the Kirkis and state of the ministerie within the same, Reforme the collegeis thairin, Resave his hienes presentationis to benefices . . . And that na presentationis to benefices be directit in tyme cuming to ony utheris; And that commissionis be extendit particularlie heirupoun in sik maner as his hienes and [his] previe counsell sall think expedient . . .*

An act of 22nd Aug. 1584 No. 2 (*Acta Parl.* III, 347) required of the clergy, under penalty of deprivation, a declaration they would be obedient to the bishop or commissioner appointed by the king and would observe the laws of the last parliament.

[26] Printed in Rymer, *Foedera* 3rd Ed. VI pt. IV p. 185. The fundamental provisions of the treaty run:—

Primum, Conventum concordatum et conclusum est, quod iidem Principes

As a consequence of common effort in repelling the Roman catholic attack, the king and the zealous presbyterians were drawn nearer together. Thus in 1592 an act was passed embodying a compromise. Meetings of the general assembly and of the minor church assemblies were permitted and their jurisdiction acknowledged within certain limits; the king or his commissioner was to summon the general assembly, but this at least once a year; the episcopal constitution was, indeed, retained, but the rights given to the bishops by the act of 1584 were withdrawn.[27] The general assembly at

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de vera pura et evangelica, quam nunc profitentur, Religione, adversus quoscunque alios qui, ejusdem Religionis evertendae causa, contra alterutrum eorum quicquam molientur attentabunt vel facient, tuenda et conservanda, hoc speciali et sacrosancto Foedere cavebunt, ac omni quo poterunt studio sedulo conabuntur et operam dabunt, ut reliqui Principes, qui eandem veram colunt Religionem, una cum illis in hoc tam sanctum Propositum et Foedus convenient, junctisque Viribus verum Dei Cultum in suis Ditionibus conservent, ac sub dicta antiqua et apostolica Religione suum Populum tueantur et regant.

Item, Conventum concordatum et conclusum est, quod hoc speciale Foedus pro tuenda et retinenda Christiana et Catholica Religione, quae hoc tempore ab utroque Principe servatur, ac in Regnis et Ditionibus earundem Divino Favore colitur et fovetur, sic et Defensionis et Offensionis Foedus contra quoscunque, qui liberum ejus exercitium in eorum Regnis et Dominiis impedient seu quovis modo impedire conabuntur, non obstantibus quibuscunque Tractatibus Amicitiarum Foederibus Confoederationibus, inter alterutrum eorum, ac ejusdem Religionis Infestatores seu Adversarios quoscunque prius initis. . . .

[27] No. 8 of 1592 (*Acta Parl.* III, 541):—

The earlier laws in favour of the reformed church are confirmed, especially No. 1 of 1581 (cf. above, note 21) and the acts cited therein. The present act *ratifies and apprevis the generall Assemblies appoyntit be the said kirk And declaris that it salbe lauchfull to the kirk and ministrie, everilk yeir at the leist, and ofter pro re nata as occasioun and necessitie sall require To hald and keip generall assemblies Providing that the kingis Maiestie or his commissioner with thame to be appoyntit be his hienes be present at ilk generall assemblie befoir the dissolving thairof Nominat and appoint tyme and place quhen and quhair the nixt generall assemblie salbe haldin. And in caise nather his Maiestie nor his said commissioner beis present for the tyme in that toun quhair the said generall assemblie beis haldin That and in that caise It salbe lesum to the said generall assemblie be thame selffes To nominat and appoynt tyme and place quhair the nixt generall assemblie of the kirk salbe keipit and haldin as they haif bene in use to do thir tymes bypast, And als ratifies and apprevis the sinodall and provinciall assemblies To be haldin be the said kirk and ministrie twyise ilk yeir as thay haif bene and ar presentlie in use to do within every province of this realme And ratifies and apprevis the presbiteries and particulare sessionis appointit be the said kirk with the haill iurisdictioun and discipline of the same kirk aggreit upoun be his Maiestie in conference had be his hienes with certane of the ministrie convenit to that effect, Off the quhilkes articles the tennour followis: . . .* The general assembly *. . . hes power to handle ordour and redress all thingis omittit or done amiss in the particulare assemblies, It hes power to depose the office beraris of that province for gude and iust causes deserving deprivatioun. . . .* A number of old acts, favourable to the Romish church, are repealed. No. 2 of 1584 (cf. above, note 25) is thus explained: it shall *na wayes be preiudicall nor dirogat any thing to the privilege that god hes gevin to the spirituall office beraris in the kirk concerning heades of religioun, materis of heresie, excommunicatioun, collatioun, or deprivatioun of ministeris or ony sic essentiall censoures speciall groundit and havand warrand of the word of god.* The act of 1584 No. 20 (cf. above, note 25) is repealed. In place thereof it is

Perth (1597), and the following one at Dundee (1597), granted the king many additional powers of church government.[28] An act of December, 1597, ordained that preachers and ministers only should be promoted to bishoprics, confirmed the right of the bishops to take part in the deliberations of parliament, and left the closer determination of episcopal rights to be agreed between the king and the general assembly.[29]

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enacted: . . . *all presentationis to benefices To be direct to the particular presbiteries in all tyme cuming with full power to thame to giff collationis thairupoun and to put ordour to all materis and causes ecclesiasticall within thair boundis according to the discipline of the kirk, Providing the foirsaidis presbiteries be bund and astrictit to ressave and admitt quhatsumevir qualifiet minister presentit be his Maiestie or uther laic patrounes.*

[28] The resolutions of 4th March, 1597, of the general assembly at Perth are printed in *Acts and Proceedings*, *l.c.* III, 895. The most important as to church constitution run:—

1. *That it is laufull to his Majestie, be himselfe, or his Hienes Commissioners, or to the Pastours, to propone in a Generall Assemblie, quhatsoevir poynt his Majestie or they desyres to be resolvit or to be reformit in matters of externall goverment, alterable according to circumstances; provyding it be done in right tyme and place, animo edificandi, non tentandi.*

9. *No Conventiouns sould be among the Pastours without his Majesties knowledge and consent, except alwayes thair Sessiouns, Presbitries, and Synods, thair meitings in visitatioun of kirks, admissioun and deprivatioun of Ministers, taking up of feids, and sick uthers as hes not bein found fault be his Majestie.*

10. *In all principall townes, Ministers sould not be chosin without the consent of thair awin flock and his Majestie.*

The most important of the Dundee resolutions (14th May, 1597) run (*Acts and Proceedings*, *l.c.* III, 925):—

First, Anent the propositioun movit be his Majestie to the Assemblie, craving that befor the conclusioun of any weghtie matters concerning the estate of his Hienes or of his subiects, his Majesties advyce and approbatioun be cravit therto, that the same being approvit be his Majestie, may have the better executioun, and, if neid beis, be authorizit be his Hienes lawis: The Assemblie craves most humblie, that his Majestie, either be himselfe or his Hienes Commissioners, in matters concerning his Majesties estate, or the haill estate of his subiects, and uthers of great wecht and importance, that hes not bein treattit of before, wald give his advyce and approbatioun therto, before any finall conclusioun of the same: and, for the better obedience to be given to such lyke statutes in all tyme comeing, that his Majestie wald ratifie the same, either be act of his Hienes Parliament, or Secreit Counsell, as salbe thocht neidfull: The quhilk his Majestie promised to doe, according to his Hienes propositioun, quhilk was acceptit and allowit of the haill Assemblie.

[29] Act of 16th Dec. 1597 No. 2 (*Acta Parl.* IV, 130):—

. . . *that the kirk within this realme, quhairin the samin religioun is professit, is the trew and halie kirk; and that sik pasturis and ministeris within the samin as at ony tyme his maiestie sall pleis to provyid to the office place title and dignitie of ane bischoip abbott or uther prelat sall at all tyme heirefter haif voitt in parliament Siclyk and als frelie as ony uther ecclesiasticall prelat had at ony tyme bigane, And als declaris, that all and quhatsumevir bishopreis presentlie vacand in his hienes handis, quhilkis as yit ar undisponit to ony persone, or quhilkis salhappin at ony tyme heirefter to waik, salbe onlie disponit be his maiestie to actuell prechearis and ministeris in the kirk or to sik utheris personis as salbe fundin apte and qualifeit to use and exerceis the office and functioun of ane minister or precheour, and quha in thair provisionis to the saidis bishoprikis sal accepte in and upoun thame to be actuelle pasturis and ministeris And according therto sall practeis and exerce the samin thairefter.*

At the union of the crowns of England and Scotland under James there were thus bishops in the Scottish church, although it had remained presbyterian in principle; and if there was no royal supremacy, there were nevertheless no inconsiderable rights on the part of the king to co-operate in the government of the church. On the other hand, neither bishops nor king had such extensive powers as in England. It was the object of James I and afterwards of Charles I to transfer English relations to Scotland and indeed to bring about a complete merging of the Scottish church in the English.

Their endeavours were, in the first instance, successful. A Scotch act of 1606 restored to the bishops the temporal possessions which had been confiscated by an act of 1587.[30] The general assembly of Linlithgow (1606) voted upon the king's recommendation that the moderators of presbyteries and provincial assemblies should be elected for a permanency, and that the bishops should be 'constant moderators' of the presbyteries which met at their episcopal seats and of the provincial synods.[31] The king set up two courts of high commission for Scotland (February, 1610).[32] The general assembly of Glasgow (June, 1610) laid down that bishops should visit their dioceses themselves unless the bounds were too great; that sentences of excommunication must be approved by them; that they were to ordain and, in association with the ministers of the bounds, to deprive; moreover, the right of the general assembly to depose a bishop was made subject to the king's consent.[33] Later in the

Item, as concerning the office of the saidis personis to be provydit to the saidis bishoprikis in thair spirituall policie and guvernament in the kirk The estaitis of parliament hes Remittit and Remittis the samin to the kingis majestie to be advysit, consultit and agreit upon be his hienes with the generall assemblie of the ministeris at sik tymes as his maiestie sall think expedient to treat with tham theron But preiudice alwayis in the mentyme of the Jurisdictioun and disciplin of the kirk, establischit be actis of parliament maid in ony tyme preciding and permittit be the saidis actis to all generall and provinciall assembleis and utheris quhatsumevir presbitereis and sessionis of the kirk.

For the resolutions of the general assemblies of Dundee (1598) and Montrose (1601) as to the representation of the lower clergy in parliament see *Acts and Proceedings of Gen. Assemb. l.c.* III, 945, 946, 954.

[30] Act of 9th July, 1606 No. 2 (*Acta Parl.* IV, 281).

[31] *Acts and Proceedings of Gen. Assembly, l.c.* III, 1027, 1029, 1039. The general assembly appended a number of restrictions. The bishops were to have as perpetual moderators no greater rights than their predecessors, and were only to act with the assent of the assembly. The right of disciplinary proceedings against the moderators of the presbyteries was to belong to the provincial assemblies, against the moderators of provincial assemblies, to the general assembly.

[32] Compare § 30, note 5.

[33] The resolutions are printed in *Acts and Proceedings of the Gen. Assembly. l.c.* III, 1095. The most important of the motions adopted are:—

. . . *ther salbe yeirlie Generall Assemblies, the indictioun quherof the Assembly acknowledges to appertaine to his Majestie be the prerogative of his royall crowne;* . . .

. . . *that the Bischops salbe Moderatours in every Diocesian Synod,* . . .

. . . *that no sentence of excommunicatioun, or absolutioun therfra, be pronouncit* . . . *without the knowledge and approbation of the Bischop of the Dyocie,* . . .

year the English bishops consecrated three Scottish bishops, thus doing away with the presbyterial character of the Scottish church *constitution* in the last decisive point. An act of 1612 confirmed the resolutions of the general assembly of 1610 with certain alterations favourable to the episcopal party, the regulations as to the depriving of a bishop being, in particular, omitted.[34]

Now followed, when Spottiswood, one of the bishops consecrated in England, had become archbishop of St. Andrews (1615), the attack on presbyterian *doctrine* and the form of worship connected therewith. The general assembly of Aberdeen (1616) adopted a new confession of faith[35] and gave a commission for the drawing up of a book of common prayer for Scotland.[36] In 1618 the irregularly constituted general assembly of Perth, under pressure from the king and with opposition from the presbyterian party, approved five articles in which kneeling at the communion, confirmation by the bishop and the observance of high holidays are prescribed, whilst the private reception of the eucharist and, in case of need, baptism in private, are declared permissible.[37] The five articles of Perth were confirmed in 1621 by an act of parliament.[38] Long discussions ensued as to the liturgy to be introduced, James I and Charles I alike advocating the simple adoption of the English book of common prayer. Ultimately a special prayer-book for Scotland was prepared, but the resistance anticipated led to repeated delays in introducing it. When, however, the acceptance of the English thirty-nine articles in Ireland had been carried (1634), Charles I,

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. . . *that all presentatiouns be direct heirafter to the Bischop; . . . the Bischop is to requyre the Ministers of these bounds quher he is to serve, to certifie . . . his conversatioun past, and abilitie, and qualificatioun for the functioun; . . . the Bischop is to take farther tryall; and finding him qualified, and being assisted be such of the Ministrie of the bounds quher he is to serve, as he will assume to himselfe, he is then to perfyte the haill act of ordinatioun.*

. . . *in depositioun of Ministers, the Bischop associating to himselfe the Ministrie of these bounds . . . is . . . to depryve him.*

. . . *that everie Minister, in his admissioun, sall sweare obedience to his Majestie, and his Ordinar . . .* (Form of oath according to the resolutions of the mixed commission of 1572).

. . . *the visitatioun of ilk dyocie is to be done be the Bischop himselfe; and if the bounds salbe greater then he can overtake, he is . . . to appoint some worthie man to be visitour in his place; . . .*

. . . *the Bishops salbe subiect, in all things concerning thair lyfe, conversatioun, office, and benefice, to the censures of the Generall Assemblie; and being found culpable, with his Majesties advyce and consent, to be deprivit . . .*

[34] Acts of 1612 No. 1 (*Acta Parl.* IV, 469). At the following general assemblies of 1616 and 1618 the archbishop of St. Andrews, contrary to usage, stepped into the moderator's place without election.' *Acts and Proc. of Gen. Ass. l.c.* III, 1116, 1144, 1145.

[35] Printed in *Acts and Proceedings of Gen. Ass. l.c.* III, 1132.

[36] *Acts and Proceedings, l.c.* III, 1128. Compare also the addition made by the archbishop of St. Andrews to a commission issued by the general assembly in regard to another matter; *l.c.* III, 1132.

[37] Printed in *Acts and Proceedings, l.c.* III, 1165.

[38] Acts of 1621 No. 1 (*Acta Parl.* IV, 596).

advised by Laud, determined to proceed in Scotland without further delay. In that country the king's right to issue ecclesiastical ordinances without the consent of the general assembly or of parliament had never been conceded. Nevertheless, Charles on his own authority published canons for Scotland by letters patent of May 23rd, 1635. In these canons it was laid down that to impugn the king's supremacy in causes ecclesiastical was an offence punishable with excommunication; that national or general assemblies were to be called only by the king's authority; that the holding of private meetings by presbyters or others to expound the Scripture or to discuss ecclesiastical matters was not allowable; and that for the future no person should be admitted to holy orders or to the performance of any ecclesiastical function without first subscribing the canons.[39] Furthermore the king, likewise upon his own authority, ordered the introduction of the newly elaborated Scotch liturgy at Easter, 1637.[40]

The first attempt to introduce this liturgy in Edinburgh led to a popular outbreak. Further revolutionary proceedings followed. On the 28th of February, or the 1st of March, 1638, the chiefs of the presbyterian party solemnly bound themselves together to defend their religion against all errors and corruptions. The document drawn up, 'the great covenant,' was signed all over the land.[41]

The king still believed that a partial retreat would leave him able to achieve something. Accordingly, he revoked the canons he had issued, suspended the introduction of the liturgy and called a general assembly. But this was no longer enough to content the presbyterians. The assembly having met addressed itself to the task of calling the bishops to account. The king now dissolved it. The assembly decided not to obey the order, and by its resolution of December the 4th, 1638, declared all general assemblies from the year 1606 to have been 'unfree, unlawful and null.'[42] Open war

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[39] Compare Collier, *Eccles. Hist.* VIII, 96 ff.

[40] The order (20th Dec. 1636) is printed in Stevenson, *Hist. of the Church etc.* 165.

[41] The 'great covenant' consists of three parts: 1. The confession of faith of 1581, in which Romish doctrines were repudiated, is repeated. 2. The acts of parliament condemning popery and supporting the reformed church are enumerated. The high commission is imputed to be illegal. 3. The confession of faith of 1581 and the laws mentioned are to be interpreted as referring to the innovations of recent times; accordingly, the subscribers bound themselves to stand together in defence of the true religion and of the royal authority against all assailants.

[42] Resolution of 4th December, 1638 (*Acts of Gen. Assembly* p. 5): *Anent the report of the committie for trying the six last pretended Assemblies, they produced in writ sundrie reasons clearing the unlawfulnesse and nullitie of these Assemblies, . . . The Assembly . . . declared all these six Assemblies of Linlithgow*, 1606 *and* 1608, *Glasgow*, 1610, *Aberdeen*, 1616, *St. Andrews*, 1617, *Perth*, 1618; *and every one of them, to have been from the beginning unfree, unlawfull, and null Assemblies, and never to have had, nor hereafter to have, any Ecclesiasticall authoritie, and their conclusions to have been and to bee of no force, vigour, nor efficacie; prohibited all defence and observance of them, and ordained the reasons of their nullitie to be insert in the books of the Assembly; . . .*

soon broke out. But before a decisive battle was struck, the hostile parties concluded the pacification of Berwick. By the treaty the king even conceded for the present the abolition of episcopacy. New disputes, however, presently arose. The king armed against Scotland. To anticipate him, the Scots in 1640, acting in concert with a part of the English opposition, invaded England, and during the further progress of the revolution presbyterianism was not only triumphant in Scotland, but dominant for a time in England also.

After the execution of Charles I, his son was proclaimed king in Scotland, and the Scottish parliament entered into negotiations with the prince. A rising which aimed at the unconditional recognition of the young sovereign was suppressed by the parliamentary forces (1650). Charles now accepted the presbyterian conditions, consenting in particular to subscribe the covenant.[43] But the victory of Cromwell over the Scots at Worcester (3rd September, 1651) compelled him to take refuge in France.[44] An ordinance of Cromwell dated April the 12th, 1654, declared Scotland to be one commonwealth with England,[45] and Scottish deputies attended the parliament in London.

After the restoration episcopal government as it had existed before the revolution was again introduced by law.[46] Moreover, an act of 1669 confirmed the right claimed by the last kings of issuing ordinances for the external government of the church, it being held that such right was implied by the supremacy.[47] In an act of 1681

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[43] After the restoration Charles II in his declaration of October 25th, 1660 (cf. as to this declaration § 7, note 66; it is printed in Cardwell, *Docum. Annals* II, 238) states that he had not expected to be reminded of his earlier promises made in Scotland under duress.

[44] The general assembly was dispersed, 20th July, 1653, by Cromwell's orders; a proposed meeting in July, 1654, was likewise forcibly prevented. The general assembly was next summoned by William and Mary, Oct. 1690 (*Acts of Gen. Ass.* pp. 220 ff.).

[45] Scobell, *Collection of Acts and Ordinances.* The ordinance in question was confirmed by act of parliament, 1656 c 10. At the restoration, the temporary union of parliaments ceased.

[46] The act of 1661 No. 46 (*Acta Parl.* VII, 30) repealed the ordinances of the parliament which met in 1649, the act of 1661 No. 126 (*Acta Parl.* VII, 86) repealed the acts and ordinances of the parliaments of 1640, 1641, 1644, 1645, 1646, 1647, 1648. From 1633 to 1640 there had been no acts passed. The acts of 1661 No. 22 (*Acta Parl.* VII, 18) declared the covenant of 1638 and all obligations based thereon abolished, and forbade the renewal of the covenant without the king's express authority.—Commission of Charles II, under date 12th Dec. 1661, instructing the English bishops to consecrate bishops for Scotland, in Wilkins, *Concilia* IV, 573.

The prayer-book of 1637 was not again introduced.—After final recognition of the presbyterian system under William III, the Scottish adherents of the episcopal church adopted the use of the English prayer-book. For the communion service, however, the form retained was that of the Scotch prayer-book of 1637. By a resolution of the synod of 1811 the English communion service became admissible as an option; its use is the regular rule under the canons of 1863, although the congregations are left free to use the Scotch form if they prefer it. Procter, *Hist. of Prayer Book* c 5 *Appendix.*

[47] Act of 1669 No. 2 (*Acta Parl.* VII, 554): . . . *asserted and declared that his Maiestie hath the Supream Authority and Supremacie over all*

it was laid down that succession to the crown was independent of any confession of faith.[48] James II did not take the prescribed coronation oath.

After the landing of William of Orange the Scottish bishops expressly declared against him, whereas the English bishops avoided doing so. In Scotland, therefore, the revolution was directed also against the bishops. Scotland having been denuded of troops to repel William's attack, at the end of 1688 and the beginning of 1689 the clergy of the episcopal party were driven from a great part of the country. The government was entirely disorganized.

A claim was now laid before the conqueror on the part of the Scottish estates setting forth that prelacy, as being contrary to the inclinations of the people generally, ought to be abolished,[49] and the abolition was effected by statute in 1689.[50] An act of 1690 restored the presbyterian clergy expelled since the 1st of January, 1661, to their churches, manses and glebes, whilst it forbade the episcopalians who had supplanted them to continue the ministry of the parishes;[51] in the same year the Westminster confession of faith was approved and the presbyterian form of church government established.[52] An

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persons and in all causes ecclesiasticall within this Kingdom; And that be vertew therof the ordering and disposall of the Externall Government and policie of the Church Doth propperlie belong to his Maiestie and his Successours As ane inherent right to the Croun; And that his Maiestie and his Successours may setle enact, and emit such constitutions, acts and orders, concerning the administration of the externall Government of the Church, and the persons imployed in the same, And concerning all ecclesiasticall meitings and maters to be proposed and determined therin, As they in their Royall wisdome shall think fit. Which acts orders and constitutions being recorded in the books of Councill and dewly published Are to be observed and obeyed be all his Maiesties Subiects, Any law, act or custome to the contrary notwithstanding . . .

[48] Act of 1681 No. 2 (*Acta Parl.* VIII, 238).

[49] Claim of right of 11th April, 1689 (*Acta Parl.* IX, 38 ff.).—A new form of the coronation oath was established on 18th April, 1689 (*Acta Parl.* IX, 48).

[50] Act of 22nd July, 1689 No. 4 (*Acta Parl.* IX, 104): . . . *the King and Queens Majesties with advyce and consent of the Estates of Parliament, doe hereby abolish prelacie and all superioritie of any office in the church in this Kingdome above presbyters* . . .

[51] They were allowed, however, half the income of the year preceding. Acts of 1690 No. 2 (*Acta Parl.* IX, 111).

[52] Act of 1690 No. 7 *Act Ratifying the Confession of Faith and settleing Presbyterian Church Government*, the *Revolution Settlement* (*Acta Parl.* IX, 133). All laws against the papists and in favour of the reformed church are revived. . . . *they by these presents Ratifie and establish the Confession of faith* (*i.e.* the confession of Westminster; cf. § 16, note 21) . . . *As also, They doe establish Ratifie and confirme the presbyterian Church Government and discipline That is to say the Government of the Church by Kirke sessions, presbyteries, provinciall synods and Generall assemblies ratified and established by the* 114 *Act Jac. VI parl.* 12 *anno* 1592 *Entituled, Ratification of the Liberty of the true Kirke* (identical with the act of 1592 No. 8; cf. above, note 27) . . . *Confirmeing the forsaid act* . . . *except that part of it, relateing to patronages* . . . *Rescinding, Annulling and mackeing voyd* . . . (acts severally specified) . . . *with all other Acts Lawes statutes ordinances and proclamationes And that in sva far allennerly as the saids Acts* . . . *are contrary or prejudiciall to, Inconsistent with, or derogatory from the protestant Religion and presbyterian Government now established* . . .

act of 1695 prohibited the 'outed' episcopalian clergy under penalties to baptize children or to solemnize marriages.[53]

The enactments of 1689 and 1690 form the legal basis of the present Scottish state church, in English statutes called simply 'The Church of Scotland.'

In consequence of the efforts of political separatists, which found expression in a measure of the Scottish parliament, the government of queen Anne took seriously in hand the legislative union of the two countries. When the negotiations upon the subject were drawing to a close, it was considered necessary in Scotland once more solemnly to lay down the constitution and the belief of the established church. Hence was passed the Scotch act, No. 6 of 1707, 'for securing the Protestant Religion and Presbyterian Church Government.'[54] This was presently ratified in the English act 6 *Ann.* (1707) c 11 s 2, 'for an Union of the Two Kingdoms of England and Scotland,' in which corresponding reservations are made to secure the church of England.[55]

The government of the state church of Scotland is conducted at the lowest stage by a 'kirk-session.' This consists of the minister and the elders, the latter usually two in number. The higher authorities are the common presbytery of several parishes,[56] the provincial synod and the general assembly.[57]

[53] Act of 1695 No. 15 *Act against Irregular Baptisms and Marriages* (*Acta Parl.* IX, 387).

[54] *Acta Parl.* XI, 402:—

. . . *Her Majesty with advice and consent of the said Estates of Parliament Doth hereby Establish and Confirm the said true Protestant Religion and the Worship Discipline and Government of this Church to continue without any alteration to the people of this land in all succeeding generations And more especially . . . Ratifies Approves and for ever Confirms the 5th Act of the first Parliament of King William and Queen Mary Ratifieing the Confession of Faith and settling Presbyterian Church Government* (identical with the act, cited above, of 1690 No. 7), *with the haill other Acts of Parliament relating thereto . . . and . . . expressly Provides and Declares that the foresaid true Protestant Religion contained in the above mentioned Confession of Faith with the form and purity of worship presently in use within this Church, and it's Presbyterian Church Government and Discipline, that is to say the Government of the Church by Kirk Sessions Presbyteries Provincial Synods and General Assemblies, all established by the foresaid Acts of Parliament pursuant to the Claim of Right, shall remain and continue unalterable, And that the said Presbyterian Government shall be the only Government of the Church within the Kingdom of Scotland . . . That . . . the Sovereign succeeding . . . in the Royal Government of the Kingdom of Great Britain shall in all time comeing at his or her accession to the Crown Swear and Subscribe that they shall inviolably maintain and preserve the foresaid Settlement of the true Protestant Religion with the Government Worship Discipline Right and Priviledges of this Church as above established by the Laws of this Kingdom in prosecution of the Claim of Right . . .*

[55] 6 *Ann.* c 11. s 1 art. II contains a provision for the descent of the crown in the protestant line, papists and persons marrying papists being barred.

s 2 repeats *verbatim* and confirms the Scottish act of 1707 No. 6.

s 3 confirms the corresponding English act 6 *Ann.* (1706) c 8.

[56] It consists of all the ministers and one elder from each congregation. On it falls the duty of examining and ordaining candidates for the ministry.

[57] Ministers and elders are chosen to it by the presbyteries; other delegates

In the nineteenth century a great controversy arose in the established church. A very strong party was aiming in particular at the abolition of the rights of patrons. As this abolition could not be realized, at the general assembly of Edinburgh in 1843 a rupture ensued; in that and the following years nearly half the ministers and laymen seceded from the state church and, aided by liberal donations, founded an independent church system, resting on the choice of ministers by the congregations, and known as the 'Free Church.' [58]

In 1874, by 37 & 38 *Vict.* c 82, private patronage was abolished in the church of Scotland and, in so far as the right was vested in the sovereign or in public corporations, without compensation.

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are sent from towns, universities and colonial congregations. A royal commissioner attends the meetings.

[58] The patronage of the crown and of private persons was upheld against the attacks of Knox by Scottish act, 1567 No. 7 (cf. above, note 20) and confirmed by 1581 No. 4 (*That ministeris salbe presentit be the kingis maiestie and the Lawit patronis to all benefices of cuir under prelacyis. Acta Parl.* III, 212) and by 1592 No. 8 (cf. above, note 27). By ordinance of the Scottish parliament, 9th March, 1649 No. 205 (*Acta Parl.* VI pt. II p. 261) all rights of patronage were abolished. This was cancelled by the enactment of 1661 (cf. above, note 46). By the act of 1690 No. 53 (*Acta Parl.* IX, 196) patronage was again abolished. For the future the heritors of the parish (being protestants) and the elders were to name a suitable person to the whole congregation, the final 'calling and entry' to be by the presbytery of the bounds. 10 *Ann.* (1711) c 21 (*An Act to restore the Patrons to their ancient Rights of presenting Ministers to the Churches vacant in . . . Scotland*) restored the rights of the previous patrons and at the same time transferred to the crown those rights of patronage which until 1689 had belonged to the dignitaries of the episcopal church. 4 & 5 *Gul. IV* (1834) c 41 ordained that, in case a new church should be erected within the bounds of a parish standing under patronage, by funds contributed voluntarily and not at the patron's charge, and should be raised by the authorities to a parish church, the original patron should have no rights of patronage in regard to the new church; but presentation should be according to regulations to be made by the ecclesiastical authorities.—The Scottish general assembly of 1835 resolved that in all cases the congregations should have the right of refusing the minister designated by the patron (resolution of 29th May, 1835, *Acts of Gen. Assembly* p. 1044): *The General Assembly declare, That it is a fundamental law of this Church, that no pastor shall be intruded on any congregation contrary to the will of the people; and, in order that this principle may be carried into full effect, the General Assembly, with the consent of a majority of the Presbyteries of this Church, do declare, enact and ordain, That it shall be an instruction to Presbyteries, that if, at the moderating in a call to a vacant pastoral charge, the major part of the male heads of families, members of the vacant congregation, and in full communion with the Church, shall disapprove of the person in whose favour the call is proposed to be moderated in, such disapproval shall be deemed sufficient ground for the Presbytery rejecting such person, and that he shall be rejected accordingly, and due notice thereof forthwith given to all concerned; but that, if the major part of the said heads of families shall not disapprove of such person to be their pastor, the Presbytery shall proceed with the settlement according to the rules of the Church:* . . . The courts did not recognize this resolution as valid, regarding it as an infringement of the rights of property. Nor did parliament and the government acquiesce in the abolition of patronage; 6 & 7 *Vict.* (1843) c 61 declared that the opposition of a majority of the members of a congregation was not in itself a sufficient ground for refusing to admit a minister. The act laid down, however, that on opposition by the congregation the presbytery, and on appeal the higher church authorities were to deliberate and decide concerning the grounds of the opposition.

The act prescribes that ministers are to be named by the congregation, or if no election is made within six months, by the presbytery of the bounds, hitherto existing rights being continued to the authorities of the church to try the qualifications of those appointed and to decide finally upon their admission and settlement.

In spite of the fact that the main controversy between the church of Scotland and the free church has thus been removed, no reunion has yet taken place.[59] The circumstance that the state church only embraces about half the inhabitants is suggestive of disestablishment, and proposals to that end (1886, 1888, 1890, 1892) have received the support of ever increasing minorities in the lower house of parliament.[60]

The overthrow of the episcopal constitution by the legislature during William III's reign and the confirmation, by the acts of Anne already mentioned, of its abolition, did not avail to extinguish utterly the episcopal church. A section of the people held fast to it, as also to the English prayer-book[61] and to the English articles of faith. As the Stuarts had always supported the episcopal church, whilst William III sacrificed it to the presbyterians, a natural consequence followed: the episcopalians were opposed to the new government and the chief part of them advocated the claims of the exiled house. In this way a close connexion arose between the episcopal church of Scotland and the English nonjurors.[62]

Notwithstanding the reservation made in the act of union with regard to church legislation for the two countries, the union soon began to exercise a modifying influence. Without alteration of the laws, first of all, the holding of episcopalian worship in separate places of assembly was tolerated; the old bishops consecrated new bishops, not, however, for definite dioceses; going back to the constitution of the Scottish church from 1225 to 1472, the college of bishops under an elected head called 'primus' assumed the supreme government. The enforcement of the still surviving laws against a clergyman who had held divine service according to the English liturgy, led to statutory expression of tolerance for the protestant episcopal church in Scotland. 10 *Ann.* (1711) c 10[63] allowed those of the episcopal communion to worship after their own fashion anywhere except in the parish churches, and permitted ministers of episcopal congregations to christen and to solemnize marriages. Ministers alike of the established and of the episcopal churches were

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[59] A map of the ecclesiastical divisions of Scotland as connected with the establishment and free church is prefixed to vol. I of Hetherington's *History of the Church of Scotland*.

[60] The liberal government in 1893 brought in a bill preparatory to the disestablishment of the church of Scotland, which is one of the questions of the day.

[61] Compare above, note 46.

[62] Compare § 7, note 81.

[63] *An Act to prevent the disturbing those of the Episcopal Communion in that Part of Great Britain called Scotland in the Exercise of their Religious Worship and in the Use of the Liturgy of the Church of England and for repealing the Act passed in the Parliament of Scotland intituled Act against irregular Baptisms and Marriages* (compare above, note 53).

required before admission to take certain oaths, repudiating Stuart pretensions to the throne and acknowledging Anne's right thereto and the right of the Hanoverian line to succeed. Further, all ministers of either communion were bidden under penalties for disobedience to pray some time during the service for queen Anne, the electress Sophia and all the royal family. After the jacobite rising of 1715, 5 *Geo. I* (1718) c 29 in substance repeated the same provisions, whilst increasing the penalties for breach.[64] The rebellion of 1745 called forth 19 *Geo. II* (1746) c 38. This act, to render supervision easier, directed the sheriffs to keep a register of episcopal meeting-houses; the penal clauses against holding episcopal service without fulfilment of the prescribed formalities, without having taken the oath and without praying for the king were made still more severe, whilst new penalties were enacted for resorting to unregistered meeting-houses; at the same time it was laid down that no minister might officiate except those to whom letters of orders had been given by some bishop of the church of England, or of Ireland.[65] The effect of this last provision was to prohibit absolutely the conduct of divine service by those who had only been ordained by Scottish bishops. But with the accession of George III (1760) penal enactments against the episcopal church in Scotland ceased to be put in force. Hence public worship began gradually to be celebrated without observance of the legal conditions. When in 1788 Charles Edward died, the authorities of the Scottish episcopal church resolved not to transfer their allegiance to his brother, but to submit to the English government, and to adopt in their service the prayer for George III. As a consequence, 32 *Geo. III* (1792) c 63[66] abolished the necessity of a registration of the meeting-houses, as also the severe penalties of previous acts; ordination by Scottish bishops was recognized as a qualification to officiate in Scotland; the requirements to take oath of allegiance to the existing government and to pray for the royal family were still persisted in; a new provision was that ministers of the episcopal church were, before their admission, to subscribe to the English thirty-nine articles.

Within the Scottish episcopalian church there broke out at the beginning of the eighteenth century liturgical disputes, especially in regard to certain usages in the eucharistic office. The quarrel was settled by a compromise in 1724.[67]

In 1732 direction by a college of bishops without fixed dioceses

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[64] *An Act for making more effectual the laws appointing the oaths for security of the government to be taken by ministers and preachers in churches and meeting-houses in Scotland.*

[65] *An Act more effectually to prohibit and prevent pastors or ministers from officiating in episcopal meeting-houses in Scotland, without duly qualifying themselves according to law; and to punish persons for resorting to any meeting-houses where such unqualified pastors or ministers shall officiate.* Supplemented by 21 *Geo. II* (1748) c 34 ss 11 ff.

[66] *An Act for granting relief to pastors, ministers, and lay persons of the episcopal communion in Scotland.*

[67] The terms are printed in Grub, *Eccles. Hist.* III, 394.

gave way to regular church government by diocesan bishops. In 1743 canons regulating the supreme control of the church were drawn up by a synod of bishops. The canons so framed were supplemented owing to subsequent resolutions in general synods. Those now in force were last collected, amended, and published in 1890.[68]

According thereto the seven bishops[69] of the 'Episcopal Church in Scotland' choose from among their number a 'primus.' He has substantially only the right of summoning the episcopal synod (*i.e.* the assembly of bishops) and, in accordance with a resolution of the majority of the episcopal synod, the provincial synod (called before 1890 the general synod), and of presiding at these synods; further, in vacant sees he may, with the assent of the other bishops, give decisions upon discipline and perform every necessary episcopal function. The provincial synod does not meet regularly at stated intervals, but only as the episcopal synod determines.[70] It consists of two chambers; the members of the first are the bishops; the second, under a 'prolocutor,' is composed of the diocesan deans, one or two professors of theology, and chosen representatives of the lower clergy of each diocese in the proportion of one for every ten entitled to vote in the diocesan synod.

In 1878 Roman catholic episcopal sees were again founded in Scotland.[71]

§ 11.

3. HISTORY OF THE CONSTITUTION OF THE CHURCH IN IRELAND.[a]

The conversion of the Irish, which dates from the middle of the fifth century, was effected by missionaries from Rome and British

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[68] *Code of Canons of the Episcopal Church in Scotland, as amended, adopted, and enlarged by a general synod holden at Edinburgh, in the Year of our Lord* 1890. Edinburgh, 1890.

[69] The bishoprics are (1890): 1. Edinburgh; 2. St. Andrews with Dunkeld, with Dunblane; 3. Aberdeen with Orkney; 4. Argyll and the Isles; 5. Brechin; 6. Glasgow with Galloway; 7. Moray with Ross, with Caithness.

[70] It last met in 1890 after an interval of fourteen years.

[71] Constitution of Leo XIII in *Acta Sanctae Sedis*, vol. XI pp. 3 ff. It ordains the establishment of six bishoprics: *St. Andrews adiuncto titulo Edinburgh* as see of the archbishop with four suffragans: *Aberdeen*, *Dunkeld*, *Candida Casa* (=Galloway), *Ergadiensis* (=Argyll) *and the Isles;* furthermore *Glasgow* is named as the see of a bishop with the title and insignia of an archbishop, but without suffragan, without archiepiscopal jurisdiction and with the duty of taking part in the synod of the province of St. Andrews. These bishops are still under the papal *congregatio de propaganda fide.*

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[a] I. Sources.

1. Laws: *The Statutes at Large, passed in the Parliaments held in Ireland, from the third year of Edward II*, 1310, *to the twenty-sixth year of George III*, 1786, *inclusive, with . . . Index.* Continued down to 1800. Dublin, 1786 ff. In all 20 vols. (Published officially; based mainly on earlier printed editions. For collections of the Irish laws see *Statutes of the Realm*, Introduction pp. 44 and 83.)

clergy.[1] A very large number of bishops, for some centuries without fixed districts, were from the earliest times spread over the

[1] There were individual Christians in Ireland before the time specified. About 430 the Roman missionary Palladius sought to gain footing in Ireland, but without success. Haddan and Stubbs, *Councils* II, 290. Him followed (according to Greith in 432, according to Todd not until later) Patricius (St. Patrick), who converted the people over a large part of the island. According to Greith the mission of Patricius was also by mandate of the pope. Todd is against this view. Compare Robert, *l. infra c.* Loofs, pp. 30–53, thinks it probable that Palladius and Patricius are identical and that Prosper Aquitanus, *Chron.* year 431 (written 455–63), from whom all remaining information about Palladius is derived, made use of the name Palladius instead of Patricius by mistake. In any case the Irish mission was supported in its progress by aid from Rome, but also, on the other hand, by the bishops of the Britons, expelled by the Anglo-Saxons.

2. Collections of documents: Usher (Usserius), James. *Veterum Epistolarum Hibernicarum Sylloge, quae partim ab Hibernis, partim ad Hibernos, partim de Hibernis vel rebus Hibernicis sunt conscriptae. Post Edit. Dublin. et Parisien. primum in Germania editum Herbornae Nassovicorum,* 1696. — Wasserschleben. *Die irische Kanonensammlung.* Giessen, 1874. (*Hibernensis,* perhaps from the end of the seventh or beginning of the eighth century. This, a collection of canons of all the Christian churches, contains, among others, Irish canons.)— As to the collections of Haddan and Stubbs, Spelman and Wilkins see appendix XIV, I, 1; as to the collection of Theiner see § 10, note *a.*

II. Church history.

Ball, J. T. *The Reformed Church of Ireland* (1537–1889). 2nd Edition. London and Dublin, 1890. (Relates to the protestant episcopal church.)—Bellesheim, Alphons. *Geschichte der katholischen Kirche in Irland von der Einführung des Christentums bis auf die Gegenwart.* 3 vols. Mainz, 1890–91. (Relates to the Roman catholic church. In vol. I a map which shows the division of Ireland into four archbishoprics [1500]; in vol. III a map exhibiting the present division of Ireland into Roman catholic archbishoprics and bishoprics.)—Brenan, M. T. *An Ecclesiastical History of Ireland.* (From the earliest time to 1829; relates to the Roman catholic church.) New Edition, Dublin, 1864.—Greith. *Geschichte der altirischen Kirche und ihrer Verbindung mit Rom, Gallien und Alemannien.* Freiburg i. Br. 1867.—Killen, W. D. *The Ecclesiastical History of Ireland.* London, 1875. 2 vols. (Relates to all religious persuasions; from the earliest time to 1871.)—Lanigan, John. *An Ecclesiastical History of Ireland from the first introduction of Christianity among the Irish to the beginning of the 13th century.* Dublin, 1822. 2nd Edition, Dublin, 1829. 4 vols.—Mant. *History of the Church of Ireland, from the Reformation to the Union, with a preliminary survey from the papal usurpation in the 12th century to its legal abolition in the 16th.* London, 1840. 2 vols. —Moran, Patrick Francis. *Essays on the Origin, Doctrines, and Discipline of the Early Irish Church.* Dublin, 1864.—Olden, Thomas. *The Church of Ireland.* London, 1892. (Abstract of the history down to the disestablishment; relates to the protestant episcopal church.)— Reid, James Seaton. *The History of the Presbyterian Church in Ireland* (till 1735, continued by W. D. Killen till 1841) . . . *with a preliminary sketch of the progress of the Reformed Religion in Ireland during the 16th century and an appendix consisting of original papers.* Edinburgh, London, 1834–53. 3 vols. New Edition by Killen (continued to 1867), Belfast, 1867. 3 vols.—Robert, Benjamin. *Etude critique sur la vie et l'œuvre de St. Patrick.* Elbeuf, 1883.—Stokes, Geo. T. *Ireland and the Celtic Church. A History of Ireland from St. Patrick to the English Conquest in* 1172. London, 1886. 2nd Edition. London, 1888. (Contains mainly church history.) As a continuation, by the same author, *Ireland and the Anglo-Norman Church. A History of Ireland and Irish Christianity from the Anglo-Norman Conquest to the Dawn of the Reformation.* London, 1889. (Both civil and ecclesiastical history.)—Todd. *St. Patrick Apostle of Ireland, A Memoir of his Life and Mission, with an introductory dissertation on some early usages of the Church in Ireland, and its historical position from the establishment of the English colony to the present day.* Dublin, 1864.— Usher, James. *A Discourse of the Religion anciently professed by the Irish and British.* London, 1867.—Warren. *Convocation of Ireland,* in *Journal of Convocation,* 1857, p. 328. (As to the Irish convocation see also Ball, *l.c.* 21, note.)—Cf. the lists of authorities at the beginning of each of the 3 vols. of Bellesheim, *l.c.*—For the common history of the old Keltic churches see the works of Loofs, Stillingfleet and Usher, cited in appendix XIV, II, 3 *b*; for the Culdees, the work of Reeves cited in § 10, note *a* II, 4.

III. Church law.

Bullingbrooke. *Ecclesiastical law, or The statutes, constitutions, canons, rubricks and articles of the Church of Ireland. Methodically digested under proper heads. With a commentary, historical and juridical.* Dublin, 1770. 2 vols. The arrangement is as in Gibson's *Codex juris etc.* (cf. appendix XIV, III).

country.[2] In Ireland, as in England, Keltic peculiarities of liturgy prevailed, nor did they give way to Roman uses before the middle of the seventh or beginning of the eighth century.[3]

Beginning at the end of the eighth century came descents and settlements of heathen Northmen (Danes and Norwegians). The new inhabitants were, from about the middle of the tenth century onwards, gradually converted to Christianity.[4] The bishops of these settlements (Dublin, Waterford and Limerick) submitted themselves, after the conquest of England by the Normans, who were of a stock kindred to their own, to the archbishop of Canterbury.[5] The church in the rest of Ireland came by degrees to recognize the bishop of Armagh as its primate.[6] Besides Armagh it created a second

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We should mention here the canon ascribed to Patricius (who, as is alleged, founded the archbishopric of Armagh; cf. however, below, note 6):—

. . . *Item quaecunque causa valde difficilis exorta fuerit atque ignota cunctis Scotorum gentium* (*i.e.* the Irish) *iudicibus, ad cathedram archiepiscopi Hibernensium, id est Patricii, atque huius antestitis examinationem recte referenda.*

Si vero in illa cum suis sapientibus facile sanari non poterit, causa praedictae negotionis ad sedem Apostolicam decrevimus esse mittendam, i.e. ad Petri apostoli cathedram, auctoritatem Romae Urbis habentem.

Hi sunt qui de hoc decreverunt, i.e. Auxilius, Patricius, Secundinus, Benignus. Post vero exitum Patricii sancti alumni sui valde ejusdem libros conscripserunt.

This canon is a forgery to support the claim of Armagh to the primacy of Ireland, and thus probably is of the eighth century. Haddan and Stubbs II, 332. But see also Greith p. 455, who defends the genuineness of the canon. (Compare a similar regulation in Wasserschleben's collection of Irish canons, Book XX, cap. 5.)

[2] Todd 4, 27 ff.

[3] For confessions of faith of the old Irish church, especially that of bishop Mochta (died 584, pupil of Patricius) and the *liber dogmatum* of the 6th or 7th century, see Greith pp. 403 ff.; on the older Irish or Scotic liturgy and on some missals which have been preserved see Greith pp. 435 ff. Compare Haddan and Stubbs I, 138 and Lanigan, *Hist.* c 32 §§ 9 ff. For particulars of the Easter controversy see Lanigan, *Hist.* c 15. In southern Ireland at the synod of Old Leighlin (*circ.* 630) the greater part of the clergy decided for the Roman method of calculation. In northern Ireland, in so far as it was not under the influence of Iona, the Roman uses were adopted about 704. Beda, *Hist. Eccles.* Book V c 15 § 403.—Compare also § 1, note 21.

[4] The first conversion on a large scale was that of the Danes of Dublin (probably in 948). Lanigan, *Hist.* c 22 § 12.

[5] It is not known that the archbishop of Canterbury exercised archiepiscopal rights in Ireland before the Norman conquest. Lanigan, *Hist.* c 23 § 16. The first known vow of canonical obedience made by an Irish bishop to the archbishop of Canterbury dates from the second bishop of Dublin (1074). Lanigan, *l.c.* c 24 §§ 7–11. Compare the letter of the clergy and people of Dublin to archbishop Lanfranc, containing a request that he will consecrate as bishop a priest Patricius, chosen by them. *Epistolae Lanfranci* (ed. Giles) p. 57. Letter of Lanfranc to king Gothricus after the consecration, *l.c.* p. 61. Waterford was raised to a bishopric in 1096, and its bishop also vowed obedience to the archbishop of Canterbury. Lanigan, *l.c.* c 25 § 6. In the appendix to Usher's *Sylloge* there are printed the vows of obedience of the bishops of Dublin: 1074, 1085, 1095, 1122, Waterford: 1096, Limerick: 1140.

[6] Patricius did not establish the see of Armagh as an archiepiscopal see; but he raised buildings there and often made the place his abode. Todd, 468 ff. Hence the claim of later bishops of Armagh to archiepiscopal rank. In ancient

archiepiscopal see at Cashel. At this time its connexion with Rome was a very loose one. Several institutions forbidden by the popes, that of *chorepiscopi* for instance, held their ground. Not until the national synod of Kells[7] (1152) was a closer union between the church and the papacy established, the legate Paparo bestowing palliums by order of Eugene III on the archbishops of Armagh and Cashel and on the bishops—as they had been hitherto—of Dublin and Tuam; at the same time the limits of the archiepiscopal provinces, now four in number, were determined, and the archbishop of Armagh generally acknowledged as primate of all Ireland, even by the bishops who had hitherto been suffragans to the archbishop of Canterbury.[8]

In 1154–6 pope Adrian IV, an Englishman by birth, approved the conquest of Ireland projected by Henry II.[9] The actual taking

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times frequent mention occurs of a chief or prominent bishop (*ardepscop*) at various places; but there is no reference in the title to the official subordination of other bishops to the one so designated. Todd p. 14 (cf. for Wales § 33, note 1; for Scotland § 10, note 5). That in the 9th century there was no see with full episcopal rights in Ireland is perhaps to be inferred from an allusion in the English council of *Celchyth*, 816 (Haddan and Stubbs III, 581) c 5: *Ut nullus permittatur de genere Scottorum* (*i.e.* at this time Irishmen) *in alicujus diocesi sacra sibi ministeria usurpare . . . Scimus quomodo in canonis praecipitur, ut nullus Episcoporum, [seu] presbiterorum invadere temptaverit alius parochiam, nisi cum consensu proprii Episcopi. Tanto magis respuendum est ab alienis nationibus sacra ministeria percipere, cum quibus nullus ordo metropolitanis, nec honor aliquis habeatur.*

[7] For the fact that the decisive synod was held at Kells (= *Kennanus, Kenana*), and as to the question of a possible subsequent assembly at Mellifont see Lanigan, *Hist.* c 27, note 96. Mansi, *Conciliorum Collectio* XXI, 767 also distinguishes two councils.

[8] Respecting this synod and other regulations made at it, compare Lanigan, *Hist.* c 27 §§ 14, 15. One of the reports upon it is printed in Wilkins, *Conc.* I, 425.—Malachias O'Morgair (originally archbishop of Armagh, after resignation [1137] bishop of Down, still later papal legate) had before wished to bring the Irish church into nearer relations with Rome, and had induced a national synod at Holmpatrick (1148) to apply to the pope for palliums for Armagh and Cashel. He was to have carried the request to Rome, but died on the way.—The only legate in Ireland before Malachias was the bishop of Limerick, at the end of the eleventh and the beginning of the twelfth century. As to erroneous mention of earlier legates see Lanigan, *Hist.* c 24 § 9.—At a later time the rights of the archbishop of Armagh as primate were, in regard to the province of Dublin, curtailed in favour of Dublin by papal bulls (of Lucius III in 1182; Innocent III in 1216; Honorius III in 1216). Compare on this point Lanigan, *Hist.* c 30 § 4. Hence a struggle for precedence in the province of Dublin between the archbishops of Armagh and Dublin, which lasted until the reformation. Details in Mant, *Hist.* I, 18. Under Edward VI an order of the English council took the primacy from the archbishop of Armagh and conferred it on the archbishop of Dublin (1551). Letters patent of Mary (dated 12th March, 1554) restored the primacy to Armagh. For the above facts see Wilkins, *Concilia* IV, 80. Finally in Charles I's reign Wentworth recognized the precedence of Armagh. Ball, *Church of Ireland* p. 129.

[9] Bull of Adrian IV, printed in Rymer's *Foedera* 4th Ed. I, 19 (year 1154), and Wilkins, *Concil.* I, 426:—

Sane Yberniam et omnes insulas quibus sol justicie, Christus, illuxit, et que documenta fidei Christiane receperunt, ad jus beati Petri et sacrosancte Romane ecclesie, quod tua etiam nobilitas recognoscit, non est dubium pertinere: . . . Significasti siquidem nobis . . . , te Hybernie insulam, ad

possession of the country by the English began in 1169 and proceeded rapidly. In 1172 Alexander III confirmed Adrian's grant.[10]

But the subjugation of Ireland was by no means complete. The English occupation was almost confined to Dublin and the adjacent eastern coast; and it was only this pale that was administered in the English fashion and under English law. As to the other parts of the country, it was enough if the suzerainty of England was recognized by the native princes, or by the English barons who presently supplanted them. If such recognition was made, there was no interference with internal affairs. The frequent risings of the Irish princes to assert their former independence, induced a lasting hostility between the English settlers and the native population. Several enactments, especially the statute of Kilkenny[11] in Edward III's reign (1367), sought in the English interest to prevent a fusion of the two nationalities.

Ireland received a separate parliament.[12] How the assembly was constituted before reformation times is not precisely known.[13] We may, however, be sure that it consisted almost exclusively of representatives of the immigrants and of those parts of the country where the immigrant element predominated. The Irish legislature was at first tolerably independent; yet from time to time the English parliament also issued laws for Ireland. 10 *Hen. VII* (1495) c 4 (Irish), the well-known Poyning's law, subjected Ireland more com-

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subdendum illum populum legibus, et viciorum plantaria inde extirpanda velle intrare; et de singulis domibus annuam unius denarii beato Petro velle solvere pensionem, et jura ecclesiarum illius terre illibata et integra conservare.

Nos itaque . . . gratum et acceptum habemus ut, pro dilatandis ecclesie terminis, pro viciorum restringendo decursu, pro corrigendis moribus et virtutibus inserendis, pro Christiane religionis augmento, insulam illam ingrediaris . . . et illius terrae populus honorifice te recipiat, et sicut dominum veneretur, jure nimirum ecclesiarum illibato et integro permanente et salva beato Petro et sacrosanctae Romanae ecclesiae de singulis domibus annua unius denarii pensione.

Upon the exact date of this bull see Lanigan, *Hist.* c 28, note 14.—The genuineness of this bull and of the bull of Alexander III which follows is disputed, but, as it appears, on insufficient grounds. Literature of the subject in Jaffé, *Regesta* 2nd Ed. No. 10056 and Bellesheim, *Gesch. d. Kath. K. in Irland* I, 367. Compare also Liebermann in *Beilage zur Dtsch. Zeitschrift f. Geschichtswissenschaft*, vol. VII (year 1892), pt. 1, E. 58.

[10] Bull of Alexander III in Usher, *Sylloge* No. 47: *Quoniam ea, quae a decessoribus nostris rationabiliter indulta noscuntur, perpetua meruntur stabilitate firmari; venerabilis Adriani Papae vestigiis inhaerentes nostrique desiderii fructum attendentes, concessionem eiusdem super Hibernici regni dominio vobis indulto (salva beato Petro et sacrosanctae Romanae Ecclesiae; sicut in Anglia, sic et in Hibernia, de singulis domibus annua unius denarii pensione) ratam habemus et confirmamus. . . .*

[11] The statute is not printed in the official collection; but the text has been issued by James Hardiman in the *Publications of the Irish Archaeological Society*, vol. III.

[12] Edward II ordered the holding of yearly parliaments. Their institution in a more complete form dates from 31 *Ed. III* (1357) st. 4. Stubbs, *Const. Hist.* II, 431 c 16 § 259.

[13] Compare Ball, *Church of Ireland*, append. D and Q.

pletely to English influence. The position of the two parliaments in regard to each other after that enactment was a disputable matter, and was not definitively settled until the eighteenth century.[14]

In spite of the fact that the English regulations against provisions were introduced in Ireland, the appointments to Irish bishoprics in the two centuries before the reformation were made in Rome,

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[14] The Poyning's act laid down that the English king and council must approve beforehand the laws to be enacted in Ireland and the summoning of parliament there:—

. . . *that* . . . *no Parliament be holden hereafter in the said land, but at such season as the King's lieutenant and counsaile there first do certifie the King, under the great seal of that land, the causes and considerations, and all such acts as them seemeth should pass in the same Parliament, and such causes, considerations, and acts affirmed by the King and his counsail to be good and expedient for that land, and his licence thereupon, as well in affirmation of the said causes and acts, as to summon the said Parliament under his great seal of England had and obtained; that done, a Parliament to be had and holden after the forme and effect afore rehearsed.* . . . The act 3 & 4 *Phil. & Mar.* (1556) c 4 (Irish), 'declaring how Poning's act shall be exponed and taken' provided for the introduction of new bills or the alteration during the session of parliament of those already introduced. An act of the same Irish parliament as had adopted the Poyning's law, 10 *Hen. VII* c 22 ordered: *That all estatutes, late made within* . . . *England, concerning or belonging to the common and publique weal of the same, from henceforth be* . . . *acceptyd, used and executed within this land of Ireland.* . . . Acts of the English parliament between 1495 and 1800 were, however, only valid in Ireland, when it was so specified in them. Thus in many statutes of the reformation times we find the phrase: *this Realm* (England) *and other the Kings Dominions.* For early cases of legislation for Ireland by the English parliament see, for example, *Peers Report* I, 176. As early as Henry VI the Irish parliament disputed the right of the English to make laws for Ireland, and the quarrel lasted until the reformation. It is worthy of note that in several cases in which English acts were passed for England 'and other the king's dominions,' the Irish parliament made its own laws upon the same subject. Ball, *Church of Ireland*, appendix L. Moved by several acts passed by the English parliament for Ireland in William III's reign, Molyneux, in his *The Case of Ireland's being bound by Acts of Parliament in England stated*, attacked at some length the right claimed. In opposition to this attack it is declared in 6 *Geo. I* (1719) c 5 (English) *An Act for the better securing the dependency of the Kingdom of Ireland upon the crown of Great Britain:* . . . *that the* . . . *Kingdom of Ireland hath been, is, and of right ought to be subordinate unto and dependent upon the crown of Great Britain* . . . , *and that the Kings majesty, by and with the advice and consent of the lords spiritual and temporal and commons of Great Britain in parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity, to bind the Kingdom and people of Ireland.* . . .

After the accession of George III Irish opposition to this view grew stronger. 21 & 22 *Geo. III* (1781–2) c 47 (Irish) laid down as against the provisions of the Poyning's act that ratification under the great seal of Great Britain was only to be sought in respect of bills *already passed* by the Irish parliament. To meet the wishes of the Irish, 6 *Geo. I* c 5 was repealed by 22 *Geo. III* (1782) c 53 (English), whilst 23 *Geo. III* c 28 (English) declared the right claimed by the people of Ireland to be bound only by laws enacted by the king and the parliament of that country to be established and ascertained for ever. The inconveniences which arose from the now independent position of the Irish parliament led soon (1800) to its union with the English. Upon recent Irish demands we need not here touch.

although the desires, usually expressed by the king concerning the English districts, were, as a rule, treated with respect.[15]

Whilst Henry VIII in England was taking the final steps to shake off the papal yoke, a serious rising had again broken out, the leader being Thomas Fitzgerald. The rebellion suppressed (1535), Henry now endeavoured to carry his measures against the papacy into effect in Ireland no less than in England. With this object in view he procured the election of Browne, provincial of the Austin friars in England, whose sympathies were with the reformation, to the archbishopric of Dublin, and assigned to him and others the mission of negotiating with the nobility and winning its support for the English policy towards the church. But Browne's negotiations bore no fruit; whilst from the overwhelming majority of the clergy, especially in the districts under the control of the archbishop of Armagh, Henry's policy encountered stubborn resistance. As nothing was to be done in the way of kindness, resort was had to legislation, and decisive measures were passed partly by the Irish parliament, which was under English influence, partly by the English parliament directly.[16] But compulsory enactments were only operative where there was an organized administration upon the English model; and the laws in question, although applicable to the whole country, remained unexecuted in the native provinces, that is, in by far the larger part of Ireland.

The government of Edward VI continued the efforts to introduce ecclesiastical reform in Ireland. Its exertions were especially directed to securing the acceptance of the new English book of common prayer; but here again success was only achieved in the districts under regular English administration.[17]

Mary contented herself with depriving of their benefices those of the clergy who were leading spirits of the protestant movement. In correspondence with the course adopted in England, pope Paul IV

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[15] Ball, *Church of Ireland*, append. I.—Cf. also 32 *Hen. VI* (1454) c 1 (Irish) *An Act that all Statutes made against Provisours, as well in England, as in Ireland, shall be had and kept in force.*

[16] The following are the most important statutes of Henry VIII for Ireland, dealing with ecclesiastical policy: 28 *Hen. VIII* (1537) c 2 (Irish) *An Act of Succession of the King and Queen Anne;* c 5 (Irish) *Act of Supremacy;* c 6 (Irish) *An Act of Appeales;* c 13 (Irish) against maintaining the supremacy of the pope, introduced the supremacy oath; cc 8, 14, 26 (Irish) conferring the First Fruits and twentieths on the king; c 19 (Irish) against the validity of papal dispensations.—The monasteries, excepting those in remote Irish districts, were dissolved: 28 *Hen. VIII* c 16 (Irish) *An Act for the Suppression of Abbyes;* 33 *Hen. VIII* (1542) sess. 2 c 5 (Irish) *An Act for the Suppression of Kylmaynham and other Religious Houses.*

[17] The English act 1 *Ed. VI* c 1 s 7 ordered the receiving of the eucharist in both kinds in the church of England and Ireland. The first prayer-book of Edward VI was introduced not by statute, but by a royal ordinance to the chief officials in Ireland (dated 6th Feb. 1551). But the greater part of the clergy, led by the archbishop of Armagh, refused obedience. The English rules of consecration were not expressly introduced into Ireland, but were observed at the consecration of two bishops in Feb. 1553. No attempt was made to compel the use of the second prayer-book of Edward VI. Cf. Ball, *Church of Ireland* pp. 38 ff.

issued a bull, in which he confirmed the disposals of church lands which had been made, as also other acts of administration under the reform laws; an Irish statute then incorporated these papal concessions and, at the same time, repealed the most important part of the reform legislation.[18] Another Irish act revived the old laws against heresy.[19] A commission, given not long before the queen's death, to put them into force never had efficacy, so that the sanguinary persecution of heretics which characterized the reign of Mary in England was in Ireland unknown. But her policy did not tend to mitigate national animosities. A new insurrection of the native princes broke out, and its suppression was followed by an extension of the English pale at their expense.

Elizabeth procured the adoption in the Irish parliament of 1560 of reforming laws which, with a few variations, answered to those passed in England at the beginning of her reign.[20] But these again could only be rendered in some degree operative in the country settled by Englishmen; in the Irish parts Elizabeth, like her predecessors, met with unyielding opposition. New revolts occurred, which, fomented by the pope[21] and by the catholics in England, were afterwards supported by the landing of Spanish troops and could not be entirely extinguished. A truce concluded in 1599 with the rebels by Essex, the commander of the royal forces, by which, among other conditions, freedom of worship appears to have been granted to the Roman catholic church,[21a] was not ratified by Elizabeth; only a few

[18] 3 & 4 *Phil. & Mar.* (1556) c 8 (Irish) *An Act repealing Estatutes, and Provisions made against the See apostolique of Rome, sithence* 20 *Hen. VIII, and also for the Establishment of spiritual and ecclesiastical Possessions and Hereditaments conveyed to the Laity.*—Cf. further 3 & 4 *Phil. & Mar.* (1556) c 10 (Irish) *An Act for the Dischardge of the Furst Fruites;* c 13 *An Act declaringe the Queen's Highnes to have bene born in a moste just and lawfull Matrimony, and also repealinge all Actes of Parliament and Sentences of divors had and made to the contrarie.*

[19] 3 & 4 *Phil. & Mar.* (1556) c 9 (Irish) *An Act for reviveinge of thre Statutes made for the Ponyshement of Heresies.*

[20] We may mention especially 2 *Eliz.* (1560) c 1 (Irish) *An Act restoring to the Crown the auncient Jurisdiction over the State Ecclesiasticall and Spirituall, and abolishing all foreine Power repugnant to the same;* c 2 (Irish), concerning the introduction of the new prayer-book; c 3 (Irish) *An Act for the Restitution of the First Fruits and Twentieth Part, and Rents reserved nomine X. or XX. and of Parsonages impropriate to the imperiall Crown of this Realm;* c 4 (Irish) concerning the appointment of bishops (a variation from the corresponding English act was that appointment by royal letters patent was retained; nevertheless, upon the advancement of Loftus to the archbishopric of Armagh in 1563, a *congé d'eslire* was issued. Ball, *Ch. of Ireland* p. 73); c 5 (Irish) *An Act of Recognition of the Queene's Highnesse Title to the Imperial Crowne of this Realme;* c 7 (Irish) concerning a new confiscation of the possessions of the hospitallers of saint John, possessions which Mary had released.

The English thirty-nine articles were not introduced into Ireland during Elizabeth's reign; the eleven articles of 1559 had been in use from 1566 (cf. § 16[4]).

[21] Compare, for example, a papal bull of 1600 in Wilkins, *Concilia* IV, 362.

[21a] An abstract of the demands of Tyrone in Winwood, *Memorials* I, 119. There was no written agreement. As to the trustworthiness of this abstract see Bagwell, *Ireland under the Tudors* III, 349, note 1.

days after the queen's death a convention was arrived at, by which Tyrone, the chief of the Irish rebels, submitted, the possession of almost all his lands being secured to him; the definitive treaty did not contain any proviso as to religious matters.[21b]

In the period of transition which followed the reform laws of Henry VIII the practice as to the filling of episcopal sees in Ireland was not determinate.[22] Henry made some appointments independently, even in the native provinces, without remonstrance from the pope. In other cases he confirmed papal nominations upon which he had not been consulted; or, at least, silently acquiesced in them. During his rule a double nomination was only once made, namely to the archbishopric of Armagh (1543), the pope's nominee never obtaining possession. Not until the beginning of Elizabeth's reign did the division between papal and protestant bishops become accentuated. About 1570 bishops of both kinds were found in the greater number of dioceses, and in the years ensuing the two parties, as far as might be, perfected their organizations, which grew to be independent, each of the other, in all parts of Ireland.

Under James I the suppression of a rebellion in Ulster furnished the occasion for new and extensive confiscations of land. The domain so won was given up to Scotch and English settlers, and the whole north of Ireland transformed in this way into a new fulcrum for English power and for protestantism. On the other hand James I was concerned to draw the Irish from the position of a merely subject race and induce them to participate in the administration of their country. Accordingly, at the elections for 1613, those of Irish stock and even those who had refused the oath of supremacy were declared eligible for the lower house; yet the manner in which the constituencies were divided was used to secure a preponderating number of protestants. In this parliament the laws which aimed at keeping the Irish as a people permanently separate from the English, were repealed.[23]

In the year 1615 the protestant church of Ireland, influenced largely by the Scots settled in such numbers in the north, adopted a series of articles of belief which, without abolishing the episcopal constitution of the church, did not ratify it, which passed over in silence the difference between bishops and priests, and in many other respects took into account puritan diversities of opinion.[24] These articles were ultimately ratified by the lord deputy, pur-

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[21b] According to Bellesheim, *Gesch. d. Kathol. Kirche in Irland* II, 229 Tyrone had in the draft of the treaty stipulated for religious liberty, but was answered that the English had no intention of troubling the Roman catholic clergy.

[22] See more in Brady, *The Episcopal Succession in England, Scotland and Ireland* 1400–1875, *with appointments to Monasteries.* Rome, 1876; and Cotton, *Fasti Ecclesiae Hibernicae.* Dublin, 1845–60, supplement 1878.—Illustrations are collected, particularly from the preceding works, in Ball, *Church of Ireland*, app. I. N. R. S.

[23] 11–13 *Jac. I* c 5 (Irish).

[24] *Articles of Religion agreed upon by the Archbishops, and Bishops, and the rest of the Clergy of Ireland in the Convocation holden at Dublin in the year*

suant, it is said, to the direction of the king.[25] But in 1634 Wentworth succeeded in robbing these 'Irish articles' of their character as a mark of separation from the English church by inducing the Irish convocation to accept a series of canons, wherein the English thirty-nine articles were taken over and approved without any change.[26] From this point the protestant church of Ireland remained bound to the state church of England.[27] The presbyterians had, however, established meanwhile a constitution of their own in Ireland as elsewhere.

The year 1641 was marked by a new and general rising of the Irish Roman catholics, measures for whose repression were taken by Charles as well as by the English parliament. The rising had at the outset been the issue of mingled national and religious antipathies. Political divisions, a consequence of the civil war in England, complicated the situation still further. Thus for the next few years the grouping of parties in Ireland was subject to alteration. The lord lieutenant Ormond, at the head of a royalist middle party, now sought by concessions to win the Irish for the king, now made common cause with the parliamentary forces to baffle that severance of Ireland from England at which the pope was aiming. It was only after the execution of Charles that, in 1649 and 1650, Cromwell and his successors in the command crushed the Irish rebellion,[28] and so swept away the indulgences granted by Charles to Roman catholicism. By an act of the Barebone parliament of 26th Sept. 1653[29] a large portion of the land that had been

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of our Lord God 1615 *for the avoiding of diversities of opinions, and establishing of consent touching true religion* (Wilkins, *Conc.* IV, 447). The Lambeth articles of 1595 (see § 16, note 20) are adopted in them almost *verbatim*. (Wilkins, *l.c.* note.)

[25] Ball, *Church of Ireland* 115.

[26] Printed in Wilkins, *Concilia* IV, 496. Canon 1 of 1634 runs: *For the manifestation of our agreement with the Church of England in the Confession of the same Christian Faith, and the Doctrine of the Sacraments: We do receive and approve the Book of Articles of Religion agreed upon by the Archbishops and Bishops, and the whole Clergy in the Convocation holden at London in the year of our Lord God* 1562, . . . *And therefore if any hereafter shall affirm that any of those Articles are in any part superstitious or erroneous, or such as he may not with a good conscience subscribe unto, let him be excommunicated, and not absolved before he make a publick Revocation of his error.* In the following canons the supremacy of the king is recognized and the use of the English prayer-book and form of consecration declared obligatory; further, as in the English canons of 1604, there are detailed rules for officiating clergy.—Wentworth prevented any simultaneous declaration in affirmance of the articles of 1615. On the other hand the latter were not expressly cancelled. Whether both sets were subscribed by candidates, is not certain. After the restoration, signature under canon 1 of 1634 was all that was required. Ball, *Church of Ireland* 129 ff.

[27] The Irish canons of 1711 (printed in Wilkins, *Concilia* IV, 651) are also of some importance.

[28] An act of the united London parliament of 1656 *An Act for the Attainder of the Rebels in Ireland* fixes 26th Sept. 1653 as the day of final submission.

[29] Printed in Scobell, *Acts and Ordinances*, under the title *Satisfaction of the Adventurers for Lands in Ireland; and of the Arrears due to the Soldiery there, and of other Publique Debts.*

confiscated during the insurrection was distributed amongst the English soldiers and those who had lent money to meet the expenses of the expedition; many Irishmen, mostly landowners, were expelled from the greater part of the country, but were permitted to settle in the province of Connaught and the adjoining county of Clare; Irish protestants who had remained loyal to the English government, were not affected by these measures.

The restoration of the monarchy brought the Irish papists at first only a slightly higher degree of toleration than before. The distribution of land which Cromwell had ordained and executed was confirmed by Charles II, by declaration of 30th November, 1660, and by act of parliament in 1662, but with certain mitigations.[30] The king filled the vacant sees of bishops who had died during the revolution. Afterwards James II showed favour to the Roman catholics and placed a follower of this faith at the head of the administration in Ireland. On the expulsion of James from England, the Irish papists espoused his cause, being assisted by French auxiliaries landed in the country. They were, however, defeated by William (1690 and 1691), and reduced to subjection. Limerick, the last of the fortresses that was held by the Irish, was surrendered by an agreement according to which the Roman catholics of Ireland were to have 'such privileges in the exercise of their religion, as are consistent with the laws of Ireland or as they did enjoy in the reign of king Charles II.'[30a] The exact scope of this clause was subject to doubt, as there were still statutes unrepealed prohibiting Roman catholic worship, and the extent of its toleration had changed under Charles II. Soon there were put on the statute book numerous restrictive laws against the Roman catholics and their clergy, corresponding in essentials to English enactments of the same class.[31] Especially did the test imposed, the obligation of receiving on some Sunday the eucharist according to the usage of the church of England, exclude the Roman catholics from parliament and public office. It was only towards the end of the eighteenth century that the fear of popular risings led to modifications of these enactments. But in spite of these concessions and of others a great rebellion at length broke out (1798), which, though supported by the French republic, was suppressed by the English. The latter now effected the union of England and Ireland under a common parliament (1800). The act of union further ordained that

[30] No parliament was summoned in Ireland during the commonwealth. The parliament in London acted temporarily as parliament of the united realms of England, Scotland and Ireland. In the new Irish parliament summoned in 1661 the protestants had a majority. By act of this parliament, 14 & 15 *Car. II* (1662) c 2 (Irish) the former declaration of the king concerning the distribution of lands was confirmed with some few modifications.—The new English prayer-book was approved in Ireland by a resolution of the Irish convocation of 1662, and introduced by an act of the Irish parliament 17 & 18 *Car. II* (1665) c 6. Compare also Ball, *Church of Ireland* p. 347, appendix GG.

[30a] The articles of Limerick, of 3rd Oct. 1691, with the king's ratification are printed in Plowden, *An Historical Review of the State of Ireland*, London, 1803, vol. I appendix No. 49.

[31] See Ball, *Church of Ireland* p. 175.

thenceforth the established churches of the two countries should be joined together into one united church.[32]

Mainly in consequence of agitation on the part of the Irish, the acts 9 *Geo. IV* (1828) c 17 and 10 *Geo. IV* (1829) c 7 were carried, granting the Roman catholics in all the realm equal rights in their civil and, with few exceptions, in their political relations. Hardly had the Romanists thus gained a removal of their personal disabilities, when they began to demand an equalisation of the rights of their church with those of the protestant church. The latter was still retained as the established church, the fiction being that all Irishmen belonged to it. Thus Roman catholics and protestants had alike to contribute to rates levied for its objects. In like manner tithes, which attached to the soil, continued to be paid. The officers of the state church were far too numerous in proportion to the actual number of its adherents, and in particular, as a survival from the early days of the propagation of Christianity in the island, the number of bishops was unduly large, so that the cost of the higher administration was needlessly great, whilst most of the parochial clergy were but scantily endowed. The legislation of the following years aimed at producing a change in all these respects.

The 'Church Temporalities Act' (Ireland), 3 & 4 *Gul. IV* (1833) c 37 and the amending acts 4 & 5 *Gul. IV* (1834) c 90 and 6 & 7 *Gul. IV* (1836) c 99[33] abolished church-rates, combined the sees in such a

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[32] 39 & 40 *Geo. III* (1800) c 67 (English). The union was to be operative from 1st Jan. 1801. s 1 art. V: *That it be the fifth article of union, that the churches of England and Ireland, as now by law established, be united into one protestant episcopal church to be called 'The United Church of England and Ireland'; and that the doctrine, worship, discipline, and government of the said united church shall be, and shall remain in full force for ever, as the same are now by law established for the church of England; and that the continuance and preservation of the said united church, as the established church of England and Ireland shall be deemed and taken to be an essential and fundamental part of the union; and that in like manner the doctrine, worship, discipline and government of the church of Scotland shall remain and be preserved as the same are now established by law, and by the acts for the union of the two Kingdoms of England and Scotland.* According to s 1 art. IV four lords spiritual (Irish, protestant bishops) are to sit by rotation of sessions in the house of lords of the parliament of the united kingdom. s 2 contains a regulation in accordance with an Irish act, directing that one archbishop and three bishops shall sit, changing by rotation from session to session.

[33] 3 & 4 *Gul. IV* (1833) c 37 *An Act to alter and amend the Laws relating to the Temporalities of the Church of Ireland.*

s 1 repeals a number of earlier acts, especially those concerning the payment of first-fruits and twentieth parts and the improvement of ill-endowed benefices.

s 2. 'Ecclesiastical Commissioners for Ireland' are to be appointed.

s 13. The payment of first-fruits is to cease.

s 14. Instead thereof the commissioners are to make a valuation of all benefices etc. and levy a yearly assessment therefrom.

s 32. The following bishoprics are to be united:—

Dromore	with Down and Connor
Raphoe	„ Derry
Clogher	„ Armagh
Elphin	„ Kilmore
Killala and Achonry	„ Tuam

way that instead of four archbishops and eighteen bishops[34] there came to be only two archbishops and ten bishops, and effected a series of further reforms in conformity with the needs of the time. Of other statutes belonging here is to be named especially the 'Tithes Act,' 1 & 2 *Vict.* (1838) c 109 which substituted for the tithe payable by the tenant (frequently a Roman catholic) a smaller rent-charge to be disbursed by the landowner (as a rule, protestant).[35]

Clonfert and Kilmacduagh	with	Killaloe and Kilfenora
Kildare	„	Dublin and Glandelagh
Ossory	„	Ferns and Leighlin
Waterford and Lismore	„	Cashel and Emly
Cork and Ross	„	Cloyne.

s 36. The temporalities of the merged bishoprics are to be vested in the commissioners.

s 54. The revenues of the archbishopric of Armagh and the bishopric of Derry are reduced.

ss 63 ff. The commissioners are to apply the income of the property vested in them to the maintenance of divine service, to the building or improvement of church buildings, to the augmenting of inadequate salaries etc.

s 65: . . . *it shall not be lawful for any Vestry called or holden in or for any Parish, Union, or Chapelry, or Place in Ireland, or for any Person or Persons, to make or levy any Rate or Assessment for any Church Purposes whatsoever;* . . . The opposing provisions of 7 *Geo. IV.* c 72 are repealed.

4 & 5 *Gul. IV* (1834) c 90 contains provisions as to the admissibility of suspending appointments to sinecure dignities and rectories without cure of souls whether in royal or ecclesiastical patronage; also, as to disappropriations. s 16: the title to lands etc. which was vested in 'the Trustees and Commissioners of First Fruits in Ireland' is transferred to the ecclesiastical commissioners.

6 & 7 *Gul. IV* (1836) c 99. According to s 25 the property of minor canons, vicars choral etc., in cases where no sufficient duties are attached to their offices, may vest in the ecclesiastical commissioners.

[34] Before 1833 there were the following provinces and bishoprics:—

I. Province of Armagh.
1. Armagh
2. Clogher
3. Meath
4. Down and Connor
5. Derry
6. Raphoe
7. Kilmore
8. Dromore (Ardagh, cf. No. 19.)

II. Province of Dublin.
9. Dublin and Glendalough
10. Kildare
11. Ossory
12. Leighlin and Ferns

III. Province of Cashel.
13. Cashel and Emly
14. Limerick and Ardfert and Aghadoe
15. Waterford and Lismore
16. Cork and Ross
17. Cloyne
18. Killaloe and Kilfenora

IV. Province of Tuam.
19. Tuam [and Ardagh in prov. Armagh]
20. Elphin
21. Clonfert and Kilmacduagh
22. Killala and Achonry.

[35] *An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-charges in lieu thereof.* The Irish house of commons of 1735 had already condemned the tithe of agistment (paid in respect of pasture lands), since which time the payment of it could no longer be enforced. Ball, *Church of Ireland* 218.—In the nineteenth century associations were formed to oppose the payment of any tithe whatever. They rendered it impossible over the greater part of the island to collect such dues.

Of other enactments in the nineteenth century touching the Irish church we may single out: 52 *Geo. III* (1812) c 62 *An Act to enable Coadjutors to Arch-*

In 1869 the protestant state church was placed on exactly the same level as the Roman catholic church. The 'Irish Church Act,' 32 & 33 *Vict.* c 42, dissolved from the 1st January, 1871, the legislative union between the church of England and the church of Ireland, divested the latter of its rank as the established church and confiscated the greater part of its possessions to apply them to purposes of general utility.[36] At the same time the not inconsiderable contributions were withdrawn which the state had hitherto paid to the presbyterian church in Ireland for the maintenance of its ministry, and to the Roman catholic college of Maynooth.

The protestant episcopal church of Ireland now framed an independent constitution for itself, and adopted the English articles as well as the canons of 1634 and, subject to a new revision, the English book of common prayer. All the fundamental institutions of the English episcopal church were maintained. The revised

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bishops and Bishops in Ireland to execute the Powers of Archbishops and Bishops respectively; 5 *Geo. IV* (1824) c 91 *An Act to consolidate and amend the Laws for enforcing the Residence of Spiritual Persons on their Benefices; to restrain Spiritual Persons from carrying on Trade or Merchandize; and for the Support and Maintenance of Stipendiary Curates in Ireland;* 7 *Geo. IV* (1826) c 72 *An Act to consolidate and amend the Laws which regulate the Levy and Application of Church Rates and Parish Cesses, and the Election of Churchwardens and the Maintenance of Parish Clerks, in Ireland;* 6 & 7 *Guil. IV* (1836) c 31, enabling founders of churches or chapels to vest the patronage in trustees, *An Act to amend an Act of . . . George II for the Encouragement of building of Chapels of Ease in Ireland.*

[36] The following are the provisions most important for our purpose of the measure entitled *An Act to put an end to the Establishment of the Church of Ireland, and to make provision in respect of the Temporalities thereof, and in respect of the Royal College of Maynooth.* Three state 'Commissioners of Church Temporalities in Ireland' are appointed, in whom is vested the property formerly vested in the 'Ecclesiastical Commissioners for Ireland'—whose corporation is by this act dissolved—as also all other church property whatsoever. [By 44 & 45 *Vict* (1881) c 71 *Irish Church Act Amendment Act* it is laid down that the corporation of the Commissioners of Church Temporalities shall, as soon as a corporate body under the title of the Irish Land Commission has been constituted, be dissolved and its property vested in the new corporation which shall keep a separate account of the property transferred to them under this act. As to the employment of the surplus left to the state out of the confiscated property see Ball, *Church of Ireland*, app. LL.] No compensation is to be made to the queen for her rights of patronage. The rights of private lay patrons are abolished (with compensation if applied for) in so far as they do not rest on endowment out of private means. All ecclesiastical corporations are dissolved. On the other hand it shall be lawful for her majesty to incorporate a 'Representative Church Body' with power to hold lands to such extent as is provided in the act. [This has been done. The incorporation was in 1870; its members are the archbishops and all the bishops, one clerical and two lay representatives from each diocese, and co-opted members equal in number to the number of dioceses for the time being.] From their funds the commissioners are to pay to holders of benefices an annuity for life equal to the ascertained amount of the yearly income of such benefices; also to the representative church body £500,000 as an equivalent for private endowments now become vested in the commissioners. By this and a later act [38 & 39 *Vict.* c 42 *The Glebe Lands, Representative Church Body, Ireland, Act*, 1875] the acquisition of churches, school-houses, burial grounds, parsonages and glebe lands by the representative church body is facilitated. Ecclesiastical courts

prayer-book for Ireland was published in 1877.[37] Shortly after the disestablishment fifty-four canons were agreed which contained, in particular, regulations for the external forms of divine worship and which aimed at resisting the endeavour to assimilate the worship of the protestant episcopal church to that of the Roman catholic. The most important constitutional provisions were laid down in 1870–71 in a 'Constitution of the Church of Ireland' and have been subsequently revised.

At present the highest authority in the church is the general synod consisting of two houses, the house of bishops and the house of representatives. It was formed after the passing of the disestablishment bill by the union of the two earlier provincial synods with the addition of lay representatives.[38] In the house of bishops sit the archbishops and bishops for the time being; the house of representatives is made up of elected representatives of the clergy and laity, chosen at the diocesan synods.[39] Provincial synods are no longer held. The diocesan synods[40] consist of the bishop, of the beneficed and the licensed clergymen of the diocese, and of lay synodsmen chosen at the parish vestries.[41] In the parishes besides the parish vestry there is a select vestry (consisting of the incumbent, his curates, if any, the churchwardens and not more than twelve other persons elected by the parish vestry from among its members) and two churchwardens taken from the registered vestrymen, one appointed by the incumbent, the other elected by the vestrymen.

Side by side with the above and subject in essential points to their direction are the usual officers of the episcopal church. Upon their choice the laity exercises mediate or immediate influence. The parish clergy are nominated by a board, which consists of the bishop, three diocesan representatives and three parish representatives. Private persons may by founding churches obtain a limited

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and (except in so far as relates to matrimonial causes) ecclesiastical law are by this act abolished. The right of Irish bishops to be summoned to sit in the house of lords is extinguished. Laws preventing the holding of synods, convocations etc. are repealed.

[37] The Athanasian creed is contained therein; but the rubric directing its use is omitted.—It is retained as a creed in the *Articles of Religion*.—The variations of the Irish from the English prayer-book will be found in Ball, *Church of Ireland*, app. RR.

[38] . . . *the General Synod* . . . *shall have chief legislative power* . . . *and such administrative power as may be necessary for the Church and consistent with its Episcopal constitution.* (Preamble and Declaration of *the Constitution of the Church of Ireland*.) As to the measures in the interim before the establishment of the new constitution see *Church Year-Book* for 1883, pp. 450 ff., where it is stated 'that the statutes of the General Convention, with others enacted by the General Synod, were consolidated, codified and re-enacted under the title of the Constitution of the Church of Ireland, 1879.'

[39] There is also a 'Standing Committee of the General Synod,' composed of the archbishops, the bishops, the secretaries of the general synod, members chosen by the general synod and members co-opted by the committee.

[40] In many dioceses now united under one bishop there are still separate diocesan synods,—23 in all at the present time.

[41] In the diocesan synod of Dublin the university is also represented.

right of patronage.[42] The bishops are to be elected in the diocesan synods by majorities both of the clergy and of the laity. If the majority amounts to two-thirds of the members voting of each order, the election is final. Otherwise, at least a second person must be chosen by a simple majority of each of the two orders, the bench of bishops electing from those whose names are submitted to it. To that bench also falls the appointment if the proper return has not been made by the synod within three months from the day of its meeting. The election of an archbishop of Dublin is on the same lines as that of a bishop. The archbishop of Armagh is primate of all Ireland. On the occurrence of a vacancy in the see of Armagh the diocesan synod elects in the ordinary way a bishop who bears the name temporarily of 'bishop of Armagh.' Then all the bishops, including the newly elected, choose the archbishop from among their number. If the chosen is other than the 'bishop of Armagh,' then the two exchange sees.

All the authorities and officers named are private. One and all, they are without corporative rights. In respect of property it is only the protestant episcopal church as a whole that forms a corporation, and this is externally represented by the 'Representative Church Body' consisting of clergy and laymen, which was called into existence under the Irish Church Act of 1869.[43]

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[42] The development of such rights of patronage is furthered by 47 *Vict.* c 10 *Trustee Churches, Ireland, Act*, 1884, which, in the case of chapels of ease etc. exempted from the operation of the Irish Church Act of 1869, gives the trustees the power to transfer the property therein to the representative church body, and so to bring them under the ordinary church constitution.

[43] There are (1894) the following archbishoprics and bishoprics in Ireland (they are as at the combination of sees in 1833–34, except that since the disestablishment Clogher, formerly joined to Armagh, has been made independent):—

I. Province of Armagh.

1. Armagh (the bishop is the archbishop of Armagh)
2. Meath
3. Derry, Raphoe
4. Down, Connor and Dromore
5. Kilmore, Ardagh and Elphin
6. Tuam, Killala and Achonry
7. Clogher

II. Province of Dublin.

8. Dublin, Glendalough and Kildare (the bishop is the archbishop of Dublin)
9. Ossory, Leighlin and Ferns
10. Cashel, Emly, Waterford and Lismore
11. Cork, Cloyne and Ross
12. Killaloe, Kilfenora, Clonfert and Kilmacduagh
13. Limerick, Ardfert and Aghadoe.

4. THE ENGLISH EPISCOPAL CHURCH IN THE COLONIES AND ABROAD.

§ 12.

a. General.[a]

The first formation of congregations belonging to the episcopal church in the colonies or abroad was of a purely voluntary character. As a rule, the growth of a congregation began in a combination of settlers to establish a place of meeting for divine worship and to raise funds for the maintenance of a clergyman. In the sixteenth and the first half of the seventeenth century such congregations of English episcopalians were founded in extraordinarily small numbers. By far the greater part of English emigrants dispensed with every form of church organization or preferred the system of some other church. Here and there, however, even in early times the colonial authorities granted state support to clergymen of the episcopal church.

An order of the privy council of 1st October, 1633, and a subsequent order of the king, transmitted to the English communities abroad by several letters of archbishop Laud, effected a primary conjunction of the scattered communities. It was laid down that English subjects outside of England might only appoint as their preachers clergymen who conformed to the doctrine and discipline of the church of England; to the bishop of London certain powers of supervision were entrusted.[1] Hence there arose by degrees the view that the bishop of London possessed in respect of Englishmen resident abroad all the rights of a diocesan bishop. In 1634 the king set up a commission which was to have the supreme control of colonial affairs. On this commission was conferred, among other things, the right of providing for the endowment of the church in the colonies by means of tithes and other sources of income.[2]

[1] James I had demanded that he should have the right of setting a moderator over the English ministers in Holland. The ministers petitioned against such a proceeding (1624). Their letter is printed in Collier VIII, 50. Laud then (22nd March, 1633) proposed a general regulation of divine service in English factories and among English troops abroad. His suggestions to the privy council are to be found in Heylin, *Cyprianus Anglicanus* Ed. 1719 pt. I p. 148. According to Heylin, *l.c.* pt. II p. 19, on the 1st October, 1633 an order in council was issued, corresponding essentially to the proposals of Laud. The letter of Laud, 17th June, 1634, addressed to the factory of Delph (Holland) is printed in Collier, *Eccles. Hist.* Ed. 1852 VIII, 89. Similar letters were forwarded to other factories.

[2] Their warrant is printed in Hazard, *Historical Collections etc.* I, 344.

[a] Anderson. *The History of the Church of England in the Colonies and Foreign Dependencies of the British Empire.* 2nd Edition. London, 1856. 3 vols.—Perry. *Hist. of the Engl. Church*, vol. III cc 7, 13, 21, 25, 26, 30, 31.—Phillimore. *Eccles. Law* 2230 ff.—Smith, Thomas. *The History and Origin of the Missionary Societies.* 2 vols. London, 1824, 25. (Vol. I relates to the missions of the moravians and of the baptist missionary society; vol. II to those of the London missionary society, the church missionary society and the wesleyan missionary society.)—Tucker, H. W. *The English Church in other Lands.* London, 1886.—Statistical information as to the several colonial bishoprics and their gradual origination is contained in the *Year-Book of the Church of England.*

With the middle of the seventeenth century missionary societies began to spring up in England. The first of these, known as the 'New England[3] company,' was founded in accordance with a resolution of the rump parliament of July the 27th, 1649,[4] the foundation being confirmed by Charles II (1662–3).[5] This company assists all protestant congregations and chooses the clergy employed by it, for the most part, from others than members of the episcopal church. A second association, connected more strictly with the state church, dates from 1698, and is entitled the 'Society for Promoting Christian Knowledge.' This association included missions in its scope. From it there presently broke off a 'Society for the Propagation of the Gospel in Foreign Parts,' which made missionary enterprise the exclusive object of its activity. The last-mentioned society received corporative rights from William III in 1701.[6] Under the influence of these associations church institutions in the colonies were multiplied. In not a few places assistance in various forms was afforded to church systems by the state—that is, either by the mother country or by the local authorities of the colony.

The subordination of all congregations of the episcopal church outside of England to the bishop of London proved in course of time a hindrance to their development: for the reservation to the bishop of the most important acts of administration and of some acts of divine worship presupposes his presence on the spot or his proximity to it. Especially was it felt as a grievous burden that all who had prepared themselves for orders in the colonies had to make one or two journeys to England, since there alone were bishops to ordain deacons or priests.

It was the attainment of independence by the United States of America that first prompted the surrender of the too intimate connexion between English church communities abroad and the mother country. In 1784 Scottish bishops, not subject to English church law, consecrated a bishop for Connecticut. 26 *Geo. III* (1786) c 84 removed the scruples which were derived from the English law against the consecration of foreigners, and in 1787 the English bishops consecrated two Americans as bishops of Pennsylvania and New York. When the old tradition was thus broken, there took place in the same year the consecration of the first English colonial bishop, a bishop for Nova Scotia; whilst at not very long intervals

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[3] On New England cf. § 13, note 2.

[4] Ordinance of 27th July, 1649 *For the promoting and propagating the Gospel of Jesus Christ in New England* (printed in Scobell, *A Collection of Acts and Ordinances* etc.). A corporation is founded in England under the name *The President and Society for propagation of the Gospel in New England.* It may, without restriction of mortmain, acquire land of the yearly value of £2,000. A general collection is to be made in England and Wales for this corporation.

[5] Under the name *The Society for the Propagation of the Gospel in New England and the Parts adjacent in America.*

[6] Charter dated 16th June, 1701, printed in Hawkins, *Historical Notices of Missions*, append. A.

came the consecration of separate bishops for other colonies and the multiplication of the colonial bishoprics by their division.[7]

The creation of colonial bishoprics did not rest on the act 26 *Geo. III* c 84. The diocese was determined by royal letters patent; the consecration followed precisely the same rules as the consecration of bishops for England. If then the act cited has merely an external connexion with the development of colonial bishoprics, it was nevertheless of great importance in another direction: it laid the foundation for the conversion of the church of England into an universal church. In theory, it is true, the English episcopal church had never ceased to regard itself as part of an universal church[8] which embraced (in so far as these churches were recognized by it) all the churches of the various peoples; but in practice it had no communion with any of the other churches and had become a perfectly independent ecclesiastical system. Its administration was everywhere closely connected with the administration of the English state; in Scotland only had the episcopal church already attained an almost independent position even if that position were not recognized by law.[9] The bishops consecrated for the United States were the first belonging to the English episcopal church in whom the law recognized perfect independence alike of the English civil power and of the English ecclesiastical authorities. With that consecration began the possibility of extending the constitution of the church over all the states of the world without regard to their political connexion with England.

Beside the older missionary societies new voluntary associations sprang into life to spread the doctrine and polity of the church in the colonies and in foreign lands. In 1795 was formed the 'London Missionary Society,' which, however, was not strictly attached to the established church.[10] On the other hand an association founded in 1799 and bearing since 1812 the name of the 'Church Missionary Society,' was based wholly on the doctrines of the establishment. Some years later the organization of mission work became simplified, the society for the promotion of Christian knowledge transferring

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[7] Of the larger colonies the first to receive bishops were: 1787, British North America (Nova Scotia; four years after the bishopric of Nova Scotia had been established by letters patent, an act [31 *Geo. III* c 31 s 40] reserved to the bishop of Nova Scotia the jurisdiction already assigned him by letters patent in the now separated provinces of Upper and Lower Canada); 1814, East Indies (Calcutta; 53 *Geo. III* c 155); 1824, West Indies (Jamaica and Barbadoes and Leeward Islands; 6 *Geo. IV* c 88); 1836, Australia; 1841, New Zealand; 1842, the Mediterranean (Gibraltar); 1847, South Africa.—Cf. below, note 25.

[8] Compare § 18, near notes 3 ff., and note 9.

[9] Compare § 10, notes 65, 66.

[10] In 1796 the basis of the society was thus laid down: . . . *it is declared to be a fundamental principle of the Missionary Society, that its design is not to send forth Presbyterianism, Independency, Episcopacy or any other form of Church order and government . . . , but the glorious Gospel of the blessed God, to the heathen; and that it shall be left . . . to the persons whom God may call into the fellowship of His Son from among them, to assume for themselves such form of Church government as to them shall appear most agreeable to the Word of God.*

the funds it had collected for missionary objects to its offshoot, the society for the propagation of the gospel in foreign parts, and thenceforth resigning its activity in this field. In 1841 owing to the liberality of the societies named and other voluntary contributions a 'Colonial Bishopric Fund' was started to erect and endow bishoprics in the colonies and elsewhere; the English and Irish archbishops and bishops, forming themselves into the 'Colonial Bishoprics' Council,' administered the sums collected.[11] The convocations and archbishops established 'Boards of Missions' for the two provinces, that for Canterbury in 1885, that for York in 1889; these boards were to serve as centres from which missionary enterprise could be originated.[12]

In virtue of the co-operation of the large societies mentioned with other, smaller bodies,[13] a very considerable number of bishoprics has been created in the course of the nineteenth century and the constitution of the English church otherwise extended over wide areas. At first the work was done in concert with the civil government. Parliament assigned from the public purse a part of the money requisite for the East and West Indian sees. The erection and delimitation of new bishoprics were in all cases, even where there was no statutory provision to that effect, by royal letters patent, and to the king was generally reserved the right of appointing the bishops and issuing binding rules for the administration of the dioceses.[13a] The same principle governs 6 *Geo. IV* (1825) c 87 ss 10–15, dealing with church institutions in connexion with English consulates.[14] But the movement of the present century for the severance

[11] The procedure and work of the colonial bishoprics' council may be estimated from the two declarations (1841 and 1872) printed in Phillimore, *Eccles. Law* 2233.

[12] The lines on which a board of missions for Canterbury was founded were fixed by resolutions (not binding, cf. § 55, note 24) to which both houses of convocation agreed on 4th July, 1884. *Chronicle of Conv. Cant.* 1884, summary, p. xlviii. The members of the board are: 1. The members of the upper house of the convocation of the province of Canterbury *ex-officio*; 2. An equal number of bishops and priests resident in the province, to be nominated by the lower house of convocation from their own body or from without; 3. Laymen, equal in number to the *ex-officio* members, to be nominated in the first instance by the archbishopric of Canterbury, vacancies being afterwards filled by co-option. The lower house elected for the first time in 1885.

In the province of York a board of missions was established in 1889, first in the form of a joint committee of both houses of convocation. On the 24th Feb. 1892, the upper house resolved: *That the constitution and bye-laws of the Board of Missions of this province be conformed to those of the Board of the Southern Province. Journal of Conv., York*, 1892 p. 74.

The boards of missions have already entered into relations with each other and appointed joint commissions for certain purposes. Cf. *Church Year-Book*, 1893 p. 232.

[13] A conspectus of existing missionary societies will be found in the *Church Year-Book* for 1895, c 4 p. 211.

[13a] Compare, for instance, 53 *Geo. III* c 155 ss 51, 52. Tr.

[14] The chief provisions of the part cited of the statute are: If at a place where there is an English consulate a chaplain is supported by voluntary contributions or a building procured for the holding of divine service either 'according to the rites and ceremonies of the united church of England and

of the church from the state has, since the end of the thirties, prevented any considerable assistance from being granted by the state to bishoprics to be newly created. The aid originally given to the church of the West Indies was in 1868 withdrawn (31 & 32 *Vict.* c 120); in 1869 the Irish church was by its disestablishment and disendowment also enrolled among the independent churches.[15] Moreover, the establishment of new bishoprics by royal letters patent was, after the Colenso case, abandoned in regard to colonies with their own legislatures. The quarrel between bishop Gray of Capetown, metropolitan of South Africa, and bishop Colenso of Natal, led the judicial committee of the privy council more than once (1863 ff.) to decide that, after Cape Colony had received a parliamentary constitution, the crown had no authority to confer privileges in it by letters patent.[16] At the present time neither for colonies with independent legislatures nor for crown colonies do the founding of new bishoprics and the appointment of new bishops take place by royal letters patent. Only for the East Indies is the older procedure retained,[17] in accordance with special enactments relating thereto.

The more recent creations of episcopal sees in the colonies have thus ensued without the co-operation of the English civil authorities and without their reserving any rights to themselves. Nor have such foundations, as a rule, received from the colonial authorities

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Ireland or of the church of Scotland,' the consul may, in obedience to an order . . . issued by his Majesty through one of his principal secretaries of state,' advance and pay a sum equal to the amount subscribed. (But the salary of a chaplain in Europe may not exceed £500, not in Europe £800 and building plans are to be first approved by secr. of state.) The chaplain is to be appointed by his Majesty through one of his principal secretaries of state and to hold office during his Majesty's pleasure only. Every year is to be held a meeting under the presidency of the consul of the larger subscribers (sums specified). This meeting may, subject to the consul's approval, make rules as to the management of the church and the expenditure of the money collected. These rules need the approval of secr. of state who may ratify, annul or change them at will. The establishment of hospitals and burial grounds for English subjects is also included in the scope of these sections.

[15] In Hong Kong the foreign office has directed (1881) that contributions from the state are to be discontinued as the various posts fall vacant. The chief contributions from the state—the home government or the colonial—at the present time are to Bermuda (diocese of Newfoundland and Bermuda), four West Indian bishoprics (Guiana, Antigua, Barbados, Trinidad), some Australian bishoprics (the number rapidly decreasing), the older East Indian bishoprics and Mauritius. For further particulars see the *Church Year-Book* under the reports from the several dioceses.

[16] *Long v. Bishop of Capetown* 1 *Moo. P. C., N.S.* 461. *Re Bishop of Natal* 3 *Moo. P.C., N.S.* 152. Other judgments on appeal sought, however, to reduce the inferences to be drawn from this doctrine. Cf. extracts from judgments in Phillimore, *Eccles. Law* 2245 ff. For a full account of the Colenso case see Perry, *Hist. of Engl. Ch.* III, 370 ff., 429 ff. 434 (c 21, c 25 §§ 5–8, 10). The last bishop appointed by letters patent to an independent colony was the bishop of Goulbourn (1863). According to Perry, *l.c.* III, 519 c 31 § 6, in the transition period from 1863 to 1867 no letters patent were issued, but a royal licence was granted.

[17] For example, on the founding (1892) of a separate bishopric of Lucknow, and the appointment of a bishop thereto.

any express and special recognition. In all these cases the English church of the colony concerned is not a state church, but a free association with the same rights and duties as every similar society. But in many places the earlier position of the colonial church as a state church has had after-effects, so that a general statement of the relation between the colonial churches and the English civil government cannot yet be formulated.

The circumstance that the English church in many colonies developed independently of the state, facilitated the transmission of the same constitution to foreign countries. The first bishops of the English church consecrated for such countries had been those for the United States. The act then passed, 26 *Geo. III* c 84, was, upon occasion of the establishment by England and Prussia jointly of a bishopric of Jerusalem,[18] amended in some particulars by 5 *Vict.* (1841) c 6. Soon afterwards missionary bishoprics in foreign lands were established from the United States. England followed with reluctance the example set. The first missionary bishop despatched (1855) from England was to have the field of his labours in Borneo (especially in the northwestern district, called Sarawak), no part of which then belonged to the English crown, though Brooke had become rajah of Sarawak in 1841. But to hide the innovation the new prelate was consecrated bishop of Labuan (a small British island in the neighbourhood) and Sarawak; moreover, in order to avoid legal difficulties, his consecration was not by English bishops, but by the bishop of Calcutta.[19] In 1861, without the queen's licence previously obtained, a bishop was consecrated at Capetown for the non-English region of Central Africa (Zambesi); in the same year took place the consecration in England, after the royal licence had been obtained, of a bishop for the non-English Honolulu.[20] All difficulties disappeared as the English government held more and

[18] Upon the discussions over its foundation see authorities cited in Phillimore, *Eccles. Law* 2275, note *f*. Prussia has now withdrawn from her connexion with the bishopric.

[19] Perry, *Hist. of Engl. Ch.* III, 443 c 26 § 1. Difficulties in this and other cases were caused, in particular, by the provision of the Jerusalem bishopric act that a British subject consecrated to be a bishop in any foreign country must take the oath of obedience to the archbishop.

[20] The opinion of the legal advisers of the crown was taken at the end of 1860. It ran :—

We are not aware of any statute or rule of common law by virtue of which the Archbishops or their Suffragans would incur any penalty, civil or ecclesiastical, by consecrating in this country (England) *a Bishop or missionary for foreign parts among the heathen, not subject to her Majesty; but the persons so consecrated must not assume the status, style, or dignity of a Bishop when within her Majesty's dominions . . . See Statutes* 5 *Vict.* c 6 *and* 3 *& 4 Vict. c* 33.

Shortly afterwards, however, an opinion was given that it would be better to seek the royal licence. The consecration of a bishop for Central Africa was governed by the first of these opinions; that of a bishop for Honolulu by the second. (Debates in the upper house of the convocation of Canterbury, 14th Feb. 1862, in *Chronicles of Convocation* pp. 972 ff.) In 1861 a bishop was consecrated in New Zealand for Melanesia, the islands being for the most part non-English. Perry, *l.c.* III, 447 c 26 § 6.

more aloof from participation in filling sees outside England. Thus the queen's licence to consecrate ceased to be obtained. From this time onward not only did the mother church send forth numerous missionary bishops, but the churches sprung from her, in their turn despatched missions beyond their borders. The chief quarters which the English episcopal church has chosen for missionary enterprise are Africa, East Asia, and the South Sea Islands.

The relation of the colonial churches and of the churches abroad to the ecclesiastical authorities in England has likewise undergone a change in the course of the present century. As touching non-English countries, 26 *Geo. III* c 84 had enacted that the English archbishops might consecrate the subjects of foreign states without requiring them to take the oath of obedience. On the other hand, even according to the provisions of 5 *Vict.* c 6, when British subjects were consecrated as bishops for foreign countries, the archbishops could not abstain from exacting an oath of obedience to themselves. In respect of the consecration of bishops for the colonies, the general requirement of the oath of obedience had not been legally abolished. These statutory regulations were, in the first instance, evaded by causing colonial bishops to consecrate; afterwards even the English bishops in several cases disregarded the provisions of the law.[21] At present, by 37 & 38 *Vict.* (1874) c 77, the 'Colonial Clergy Act,' the archbishop of Canterbury and the archbishop of York are allowed to dispense with the oath when they consecrate a bishop to any see situated outside of England.[22] By this means it has become possible for the bishops of the larger colonial districts, and sometimes for those of foreign dioceses adjacent to each other, to combine to form archiepiscopal provinces under archbishops, metropolitans or presiding bishops. These archbishops and the provincial courts etc. (not only in foreign countries but also in the colonies) are, as far as the more recent creations are concerned, in principle independent of the English archbishops, even if the ecclesiastical laws made by the colonial archiepiscopal provinces themselves have sometimes voluntarily allowed an appeal in certain cases from their own archbishops to the archbishop of Canterbury or other ecclesiastical authority in England. In instances of older foundations of colonial archbishoprics, a relation of subordination on the part of the colonial archbishop to the archbishop of Canterbury has been in some respects preserved; particularly is that the case in the East Indies. In like manner those colonial bishops which have not yet been united under a colonial archbishop are, as a rule, subject to Canterbury. At the present time there are in the English church the following archiepiscopal provinces: in England, two; in Ireland, two; in Scotland, one; in the United States of America, one; in British North America, two; in the West Indies, one; in the

[21] For the first time at the consecration in England of a bishop for Bloemfontein (1863); he took the oath of obedience not to the archbishop of Canterbury, but to the metropolitan of Capetown. Perry, *l.c.* III, 447 c 26 § 6.

[22] Bishops for the colonies or foreign countries are now consecrated indifferently in England or outside it.

East Indies, one; in South Africa, one; in Australia, one; in New Zealand, one. In most of these provinces there is as highest authority an archiepiscopal synod, usually consisting of two houses.

The idea of establishing a centre of union to prevent the falling asunder of these—for the most part—independent provinces naturally suggested itself. As the majority of them are, in character, free associations, a supreme synod could only be formed by voluntary action without government co-operation. Such a synod came into existence in 1867, when the archbishop of Canterbury called the first Lambeth conference. Since then it has met about every ten years under his presidency. To it are invited all the clergy of episcopal rank belonging to the church of England in any part of the world. The assembly has no right to frame binding resolutions.[23] Neither by the laws of the state nor by the laws of the churches of the various provinces has any authority been conferred upon it; indeed, it is representative only of the bishops, not of the inferior clergy or of the laity. Nevertheless, and in spite of the short duration of their existence, important beginnings of several forms of central organization have already been made at these pananglican conferences.[24] [25]

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[23] In the invitation to the conference of 1867 the archbishop of Canterbury explained: *Such a meeting would not be competent to make declarations or lay down definitions on points of doctrine. But united worship and common counsels would greatly tend to maintain practically the unity of faith.*

[24] *Origin and History of the Lambeth Conferences*, issued by the Society for promoting Christian Knowledge, 1888. For further information as to the discussions of the pananglican conferences (1867 and 1878) see Perry, *Hist. of English Ch.* III, 423 ff. c 25, 497 ff. c 30.

[25] At present (1894) there are in the English colonies and in foreign countries the following bishoprics (exclusive of those in the United States and the missionary bishoprics of American origin):—

A. North America.

I. Province of Canada.

1. Nova Scotia (founded in 1787)
2. Quebec (1793)
3. Toronto (1839)
4. Fredericton (1845)
5. Montreal (1850)
6. Huron (1857)
7. Ontario (1862; division now projected)
8. Algoma (1873)
9. Niagara (1875)

II. Province of Rupert's Land.

10. Rupert's Land (1849)
11. Athabasca (originally separated from Rupert's Land; after 1874 the main part was detached as the 'Mackenzie River'; restored in 1884)
12. Moosonee (1872)
13. Mackenzie River (1874)
14. Saskatchewan (1874)
15. Qu' Appelle (1884)
16. Calgary (1888; has a diocesan synod and its own representation in the provincial synod; until a sufficient endowment can be raised its bishop is the bishop of Saskatchewan)
17. Selkirk (1891)

[25] *continued.*

Independent bishoprics.

18. Newfoundland and Bermudas (both dioceses were separated from Nova Scotia in 1839 by letters patent. Since 1878 the Bermudas have had their own synod, which has resolved that their church shall remain united to Newfoundland. The bishop, under commission from the bishop of London, exercises episcopal jurisdiction over British subjects in the French islands of St. Pierre and Miquelon)
19. Columbia (1859; present district: Vancouver and adjacent islands)
20. Caledonia (1879; district: northern part of British Columbia)
21. New Westminster (1879; southern part of British Columbia)

B. West Indies and South America.

III. Province of the West Indies.

22. Barbados and Windward Islands (1824)
23. Jamaica and Honduras (1824; with separate diocesan organizations, since 1883 united under the same bishop)
24. Guiana (1842)
25. Antigua (1842; includes also some non-English possessions)
26. Nassau (1861)
27. Trinidad (1872)

Independent bishopric.

28. Falkland Islands (1869; the bishop is also missionary bishop for the whole continent of South America except Guiana)

C. Australia.

IV. Province of New South Wales

(embraces the whole continent and the adjacent isles).

29. Sydney (in 1836 separated from Calcutta as 'bishopric of Australia'; dioceses detached from it; has borne its present name since 1847)
30. Tasmania (1842)
31. Newcastle (1847)
32. Adelaide (1847)
33. Melbourne (1847)
34. Perth (1857)
35. Brisbane (1859)
36. Goulburn (1863)
37. Grafton and Armidale (1865)
38. Bathurst (1869)
39. Ballarat (1875)
40. North Queensland (1878)
41. Riverina (1884)
42. Rockhampton (1892)

V. Province of New Zealand.

43. Auckland (in 1841 separated from the bishopric of Australia as the 'bishopric of New Zealand'; since 1869, after divisions, under its present name)
44. Christchurch (1856)
45. Nelson (1858)
46. Waiapu (1858)
47. Wellington (1858)
48. Melanesia (1861; missionary bishopric; diocese: the islands in the Pacific not belonging to the diocese of Honolulu)
49. Dunedin (1866; until 1871 joined to Christchurch)

Independent bishopric.

50. Honolulu (1861; missionary bishopric; embraces Hawai and the Sandwich Islands; a dispute has broken out between the trustees on the one hand and the bishop and synod on the other)

[25] *continued.*

D. Asia.

VI. Province of East Indies and Ceylon.

51. Calcutta (1814; since 1890 there has been a bishop of Chota-Nagpur, who, to avoid legal difficulties, is consecrated only as assistant bishop to the bishop of Calcutta, but who is by mutual agreement independent of him except in so far as the bishop of Calcutta exercises metropolitan rights)
52. Madras (1835; includes the native states Mysore, Hyderabad)
53. Bombay (1837)
54. Colombo (1845)
55. Lahore (1877)
56. Rangoon (1877; includes since 1887 Upper Burma)
57. Travancore and Cochin (1879; missionary bishopric)
58. Lucknow (1892-3)

Independent bishoprics.

59. Jerusalem (1841; missionary bishopric; includes Egypt, Abyssinia, the Red Sea, Cyprus, Syria, Palestine and with the exception of some parts, which belong to Gibraltar, Asia Minor. List of subordinate chaplaincies in the *Church Year-Book*, 1893 p. 620)
60. Victoria (Hong Kong) (1849; also missionary bishopric for South China)
61. Singapore, Labuan and Sarawak (Labuan and Sarawak founded in 1855; Straits Settlement in 1869 detached from Calcutta and joined to Labuan and Sarawak; the present title dates from 1881; the bishop, by commission from the archbishop of Canterbury and the bishop of London, has jurisdiction in Java and elsewhere in the Malay archipelago)
62. North China (1872; missionary bishopric; of the present extent since 1880)
63. Mid-China (1880; missionary bishopric; there is also an American bishopric there)
64. Japan (1883; missionary bishopric; in 1887 the American mission and the English were incorporated by a constitution into the church of Japan; the senior of the bishops presides at the yearly synods)
65. Corea and Shing King (Manchuria) (1889; missionary bishopric)

E. Africa.

VII. Province of South Africa.

66. Capetown (1847)
67. Grahamstown (1853)
68. Maritzburg (founded in 1853 as bishopric of Natal; upon bishop Colenso's deposition, which was not recognized by the state, Maritzburg was founded in 1869, Natal continuing but not in communion with the church of England)
69. St. Helena (1859; includes Ascension and Tristan d'Acunha)
70. Bloemfontein (1863; includes Orange Free State, Basutoland, Griqualand West, Bechuanaland)
71. Zululand (1870; missionary bishopric)
72. St. John's Kaffraria (1873; episcopal seat at Umtata)
73. Pretoria (1877-8; district: Transvaal)
74. Mashonaland (1891)

Independent bishoprics.

75. Gibraltar (1842; district: North Africa, South Europe, and, in so far as not subject to Jerusalem, the Mediterranean and Black Seas and their coasts. List of chaplaincies in the *Church Year-Book*, 1893 p. 612)
76. Sierra Leone (1852)
77. Mauritius (1854; includes the islands of the Indian Ocean)
78. Central Africa (1861; missionary bishopric; seat of the bishop originally on the Zambesi, since 1863 in Zanzibar)
79. Niger River (1864; missionary bishopric)
80. Madagascar (1874; missionary bishopric)
81. Eastern Equatorial Africa (1884; missionary bishopric)
82. Lebombo (1892)
83. Nyasaland (1892)

§ 13.

b. The protestant episcopal church in the United States of America and the American missionary districts.[a]

Attempts to form settlements on the American continent began during the reign of Elizabeth, but only obtained permanent success after James had ascended the throne.

In Virginia, the oldest colony, the constitution of the English

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[25] *continued.*

F. Continent of Europe.

84. Madrid (1894).

The bishop for South Europe—except as to the new bishopric of Madrid (?)—is the bishop of Gibraltar. Ecclesiastical supervision in North and Central Europe is exercised by the bishop of London through a special assistant bishop. (List of the congregations in *Church Year-Book* for 1891 p. 607.)

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[a] I. Collections of documents.

Hawks (Francis) and Perry. *Documentary History of the Protestant Episcopal Church in the United States of America.* New York, 1862-3. (Only 9 parts seem to have been published. Therein is a collection of letters dated from 1705 to 1747 and relating to the first missions in New England, especially to those in Connecticut.)—Hazard, Ebenezer. *Historical Collections; consisting of State Papers and other authentic documents, intended as materials for a history of the United States of America.* 2 vols. Philadelphia, 1792, 1794. (Amongst other documents the original grants, most of them containing provisions as to the exercise of religion, of the several colonies are given.)

II. Church history.

Baird, Robert. *Religion in America; or an account of the origin, relation to the State, and present condition of the Evangelical Churches in the United States, with notices of the unevangelical denominations.* New York, 1856.—Ballard, Edward. *The early history of the Protestant Episcopal Church in the diocese of Maine* (embraces the time up to the middle of the nineteenth century) in *Collections of the Maine Historical Society.* Portland (Maine). Vol. VI (1859) pp. 171 ff.—Beardsley, E. Edwards. *The History of the Episcopal Church in Connecticut* (from its establishment to 1865). New York. 2 vols. Vol. I: 2nd Edit. 1869; Vol. II: 1st Edit. 1868.—Caswall, Henry. *The American Church* (*i.e.* the protestant episcopal church) *and the American Union.* London, 1861. (Contains a short account of the history, also of the state of affairs at the middle of the 19th century.)—Dalcho, Frederick. *An Historical Account of the Protestant Episcopal Church in South Carolina, from the first settlement of the Province to the War of the Revolution; with notices of the present state of the Church in each Parish; . . . to which are added the Laws relating to religious worship; the Journals and Rules of the Convention of South Carolina; the Constitution and Canons of the Protestant Episcopal Church, and the Course of Ecclesiastical Studies; . . .* Charleston, 1820. (On page 427 there is a list of the bishops of the protestant episcopal church in the United States from 1784 to 1819 with specification by whom consecrated and when.)—Hawkins. *Historical Notices of the Missions of the Church of England in the North American Colonies previous to the independence of the United States.* London, 1845.—Hawks, Francis L. *Contributions to the Ecclesiastical History of the United States of America.* Vols. I and II. New York, 1836, 1839. Vol. I: *A Narrative of Events connected with the Rise and Progress of the Protestant Episcopal Church in Virginia, to which is added an Appendix, containing the Journals of the Convention in Virginia from the Commencement* (1785) *to* 1835. Vol. II: *A Narrative of Events connected with the Rise and Progress of the Protestant Episcopal Church in Maryland.* A third volume seems to have appeared.—Lauer, E. Paul. *Church and State in New England* (from the first settlement until the disestablishment of the presbyterian-congregational church in Massachusetts, 1834) in *John Hopkins University Studies in Historical and Political Science,* ed. Herbert B. Adams. Baltimore, Series 10, Nos. 2, 3; Feb. and March, 1892.—Neal, Daniel. *The History of New England, containing an impartial account of the Civil and Ecclesiastical affairs of the Country to the year* 1700 *. . . with a new and accurate Map of the Country; and an Appendix, containing their present charter, their ecclesiastical discipline, and their municipal laws.* 2 vols. London, 1720. 2nd Edit. 2 vols. London, 1747.—Petrie, George. *Church and State in Early Maryland* (embraces the years from 1634–1692). *John Hopkins University, l.c.* Series 10, No. 4; April, 1892.—*Synodical Action in the United States;* in the *Journal of Convocation of Canterbury* (ed. Warren), 1854, p. 72. (Contains a short account of the modern practice.)—Weeks, Stephen Beauregard. *The Religious Development in the Province of North Carolina* (embraces the years 1663–1711; continuation to follow). *John Hopkins Univ. l.c.* Series 10, Nos. 5, 6; May and June, 1892. (Compare the authorities collected at the end of the essay.)—Wilberforce, Samuel. *A History of the Protestant Episcopal Church in America.* London, 1844. 1 vol.

church was taken with them by the settlers into their new abodes. The London 'Company for the first Colony in Virginia' and afterwards the colonial legislature, established in 1619, afforded the clergy of the church support by assigning them land, tithes and other sources of revenue.[1]

But when the later colonies were planted, a large proportion of the first settlers consisted of sectaries who had fled from England or Scotland to escape the persecutions of the state church. Thus episcopacy could at first gain no footing in the majority of these settlements. In the seventeenth century in New England the presbyterians and independents had the mastery;[2] in Pennsylvania, the quakers;[3] in Maryland[4]—until at the end of the century (revolution of 1689; law of 1692) the protestant episcopalians obtained

[1] Wilberforce, *Hist.* 30, 31.—State assistance was also granted to the clergy of the episcopal church elsewhere; for instance, in South Carolina about the middle of the eighteenth century; in Maryland 1691–2. The disestablishment of the church in Virginia was virtually effected by an act of the colonial legislature after the beginning of the war of independence and by the law of 1799; earlier endowments were recalled and the glebes sold by the act of 1802. Wilberforce, *History* 177, 273.

[2] The first New England colony was founded by the puritans on Massachusetts Bay in 1621. In 1628 they received a royal charter. Connecticut was settled in 1637, New Hampshire and Maine soon afterwards, and all three continued, in religion and politics, to belong to the freer school. New England was a collective term for Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

The presbyterian canons of 1634 of the church of New England are printed in Collier, *Eccles. Hist.* Ed. 1852, IX, 383, Record No. 111 and (with further documents) in Neal, *Hist. of New England*, appendix, 2nd Ed. II, 294 ff.

In 1679 the first episcopal church ('King's Chapel') was founded at Boston. Hawks and Perry, *Doc. Hist.* p. 3. The presbyterian-independent church was not abolished as the state church in the several states of New England until the earlier decades of the nineteenth century. See more in Lauer, *l.c.*

[3] The district of what was afterwards New York was first settled in 1613 by Dutch presbyterians and called New Amsterdam. In 1664 New Amsterdam was conquered by the English. By the peace of Breda, 1667, it was finally ceded to them. The first episcopal church in New York (Trinity) was endowed by the state in 1696.

In Pennsylvania the first settlers (1638) were Swedes. Later, Dutchmen from New Amsterdam migrated thither. When the territory had fallen into the hands of the English, the quaker Penn by agreement with the English government obtained the town of Newcastle and the neighbourhood, emigrated thither in 1682, built the town of Philadelphia and established the supremacy of the quakers.

[4] Settled in 1633 by English Roman catholics.

III. Church law.

Buck, Edward. *Massachusetts Ecclesiastical Law.* Boston, 1866. Revised edition, Boston, 1875 (cf. p. 283, conspectus of the laws of the several states in regard to the conferring of corporative rights on religious societies).—Hoffman, Murray. *A Treatise on the Law of the Protestant Episcopal Church in the United States.* New York, 1850.—The same. *Ecclesiastical Law in the State of New York.* New York, 1868. (Contains an account of the law, especially of civil enactments, in regard to all the more important religious societies in the state of New York.)

IV. Journal.

Journal of the proceedings of the Bishops, Clergy and Laity of the Protestant Episcopal Church in the United States of America. (Has appeared since 1784 every three years; contains in the later issues statistical accounts, the constitution in its form at the time being, and a systematically arranged collection of all the provincial canons prevailing; the date of the various regulations affecting the constitution and of the canons is given.)

ascendency—the Roman catholics; in Carolina,[5] the quakers, until in 1701 episcopacy prevailed there also.

It was thus natural that in the seventeenth century very few clergymen of the church of England were to be found in North America;[6] nor was local control by means of a bishop known. The consequence of this latter fact was that those who wished to officiate in North America in conformity with the church, had to seek orders of English bishops, and to make one or two special journeys across the sea. As early as 1638 archbishop Laud suggested the appointment of a separate bishop for North America, without, however, carrying his point. Lord Clarendon's effort in the same direction during the reign of Charles II remained, in like manner, without result. In spite of the facts that owing to the activity of the newly founded missionary societies the number of clergymen of the church multiplied and that the despatch of a bishop was repeatedly advocated, as, for instance, by archbishop Tenison in his will (1715) and in 1741 by Secker, bishop of Oxford, afterwards archbishop of Canterbury,[7] yet no special bishop was sent out as long as the colonies were subject to England. About the year 1723 one Talbot, a missionary stationed in New Jersey, caused himself to be consecrated by bishops of the English sect of nonjurors[8] and, along with another bishop of the same sect, Welton by name, repaired to America. Welton returned at the bidding of the English authorities and Talbot died in a few years, seemingly after he had conformed to the church of England.[9] Thus even this attempt to secure protestant bishops for America proved fruitless.

After the declaration of independence (1776), the wish of the Americans naturally grew stronger to be no longer restricted to the bishop of London and the other English bishops as the sources from which they might obtain priest's or deacon's orders. After the recognition of the independence of the United States (1783) there was another obstacle: the English rules of ordination required the civil oath of supremacy and allegiance to be taken; and it was believed in England that, even in the case of the subjects of now independent states, that requirement could not be dispensed with except by express statutory authorisation. Such authorisation was first given by 24 *Geo. III* sess. 2 (1784) c 35, to the bishop of London.

The clergy of the episcopal church in Connecticut were the first

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[5] Founded in 1663, divided into North Carolina and South Carolina in 1732.

[6] See a contemporaneous statement printed in Wilberforce, *History* 93.

[7] Cf. Porteus, *The Works of Secker* Ed. 1825, Introd. pp. xxxiii ff. For further efforts of the kind compare Hawkins, *Hist. Notices* 375 ff.

[8] On the sect of the nonjurors cf. § 7, note 81.

[9] The nonjuring bishop Taylor consecrated Welton 1723–4 and soon afterwards Talbot and Welton together. The orders of the two latter were, however, not recognized as valid by the rest of the nonjurors. Welton on his recall repaired to Portugal, where in 1726 he died. Lathbury, *History of the Nonjurors*, London, 1845, p. 364. Talbot died in 1727. Hawkins, *Historical Notices*, 147.—Perceval, *An Apology for the Doctrine of Apostolical Succession with an Appendix on the English orders*, London, 1839; p. 224 has the note: *Talbot took the oaths and submitted.*

to take advantage of the altered circumstances. They chose one of their number, Seabury, as their bishop and sent him in 1783 to England to receive consecration. But in England he did not succeed in removing the scruples which existed. He therefore addressed himself to the Scottish bishops and was consecrated by them in the year 1784, upon which he returned to Connecticut to enter upon the duties of his office.[10]

After a preliminary meeting in 1784, on the 1st of May, 1785, there assembled at Philadelphia the first American general convention, consisting of deputies, both clerical and lay, from the states of New York, New Jersey, Pennsylvania, Maryland, Virginia and South Carolina. A resolution was passed to apply to the English bishops to consecrate 'such persons as shall be chosen and recommended to them for that purpose from the conventions of this church in the respective states.'[11] In consequence of the request made to them, the English bishops, to remove once for all the legislative difficulties which hampered them in acceding to it, effected the passing of 26 *Geo. III* (1786) c 84. The act empowers the archbishop of Canterbury or the archbishop of York for the time being, with such other bishops as either may call to his assistance, to consecrate as bishops persons who are subjects of foreign states; but the archbishop must first obtain for each person to be consecrated the royal licence by warrant, and must satisfy himself of the sufficiency in good learning, soundness of faith and purity of manners of each; on the other hand the king's licence to elect is not needed in such cases, nor his mandate for confirmation and consecration, nor the taking of the oaths of allegiance and supremacy nor of the oath of obedience to the archbishop. Further negotiations between the American convention and the English bishops led the former to agree to recall part of the already accepted changes in respect of the creeds and of the liturgy.[12] Subsequently the English archbishops and two English bishops consecrated (1787) William White and Samuel Provoost, who had been elected in the conventions as bishops of Pennsylvania and New York. Madison, elected in Virginia, was likewise consecrated (1790) by English bishops. In 1789 bishop Seabury and the episcopal church of New England had taken part in the general convention. In 1792 Seabury and the three bishops who had been consecrated in England jointly laid hands on a bishop for Maryland; from that time consecration of American bishops by American bishops became the continuous practice.[13]

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[10] In 1784 John Wesley consecrated, though himself only a priest, one Dr. Coke as superintendent of the methodist communities in America. The title superintendent was soon changed to bishop. Wilberforce, *History* 179.

[11] The resolution is printed in Perry, *Hist. of Engl. Church* III, 140 c 7, notes and illustrations.

[12] As a result of these negotiations the American church restored the Nicene creed to its place, and also the 'He descended into hell' clause in the Apostles' creed. (The use of the clause, left optional at the time, was ordered in the revisions of 1886, 1889.) It, however, rejected the liturgical employment of the Athanasian creed. Wilberforce, *Hist.* 218, 230.

[13] Wilberforce, *Hist.* 232.

The general convention of bishops, clergymen and laymen held at Philadelphia in 1789 passed resolutions which permanently determined the form of the protestant episcopal church in the United States of America. A constitution was agreed on, which, with later alterations in detail, is still in force. The convention also adopted a prayer-book for American use, which was closely related to the English book of common prayer.[14]

According to the constitution devised, the general assembly, which meets for ordinary sittings once every three years, consists of a house of deputies and a house of bishops. The former is composed of clerical and lay delegates sent by the dioceses. The voting in the house of deputies is by dioceses. Upon the motion of the lay or clerical representatives of a diocese, the voting is by orders, that is the clergy and the laity vote separately; a resolution is only passed by the house of deputies when it is supported by majorities —reckoned by dioceses—of both orders. The house of bishops may *expressly* refuse assent to a resolution of the lower house; otherwise, the resolution is binding even without the express approval of the bishops.

The general convention is regulated by a 'presiding bishop.' Though he has certain small privileges, he does not possess archiepiscopal rights.[15]

In 1893 there were in the United States fifty-three bishoprics with complete constitutions, seventeen in which the constitution was being developed.

The American church has also sent missions to foreign lands, and

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[14] The American prayer-book of 1789 (*The Book of Common Prayer . . . according to the Use of the Protestant Episcopal Church in the United States of America*) underwent frequent alterations in detail. Several times a *Standard Prayer Book* was published officially under the direction of the general convention (*e.g.* 1844, 1871). A thorough revision began to be made in 1880, and its results were accepted in 1886 and 1889 by the general convention. Procter, *Hist. of Prayer Book* c 5 appendix.

[15] The constitution further lays down: Prayer-book, rules for ordination and articles of belief are the same for all dioceses. Like the constitution itself, they can only be changed by two consecutive general conventions. Bishops may only be judged (and that according to more precise rules to be issued by the general convention) by bishops. The punishments for bishop, priest or deacon, viz. reprimand, suspension and degradation, can only be pronounced by a bishop. Before ordination the following declaration is to be subscribed: *I do believe the Holy Scriptures of the Old and New Testament to be the word of God; and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrines and Worship of the Protestant Episcopal Church in the United States.*

From the canons (*Digest of Canons*, 1874) the following provisions may be mentioned: In dioceses with a complete constitution bishops are to be chosen by the diocesan convention and need, before they are consecrated, the confirmation of the house of deputies (in case it is not sitting, of a majority of the standing committees of the several dioceses) and of the house of bishops. In every diocese there is a diocesan convention, also a standing committee chosen by that convention to advise the bishop. The standing committee chooses a president from its members. Several dioceses within one state may form a federate convention or council, whose rights can only be fixed by consent of the general convention.

at an early period took the step of placing some of these missions under separate bishops. Thus American episcopal sees were founded in 1844 for China, in 1866 for Japan.[16]

The first Roman catholic bishop was consecrated to Baltimore in 1789; sees of New York, Philadelphia, Boston etc. were afterwards established.

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[16] In 1893 there were the following bishoprics in the United States and the American missionary field (*Church Year-Book* 1894, pp. 359 ff.):—

1. Alabama
2. Albany
3. Arkansas
4. California
5. Central New York
6. Central Pennsylvania
7. Chicago
8. Colorado
9. Connecticut
10. Delaware
11. East Carolina
12. Easton
13. Florida
14. Fond du Lac
15. Georgia
16. Indiana
17. Iowa
18. Kansas
19. Kentucky
20. Long Island
21. Louisiana
22. Maine
23. Maryland
24. Massachusetts
25. Michigan
26. Milwaukee
27. Minnesota
28. Mississippi
29. Missouri
30. Nebraska
31. Newark
32. New Hampshire
33. New Jersey
34. New York
35. North Carolina
36. Ohio
37. Oregon
38. Pennsylvania
39. Pittsburgh
40. Quincy
41. Rhode Island
42. South Carolina
43. Southern Ohio
44. Southern Virginia
45. Springfield
46. Tennessee
47. Texas
48. Vermont
49. Virginia
50. Western Michigan
51. Western New York
52. West Missouri
53. West Virginia

Missionary Bishoprics.

54. Alaska
55. Montana
56. Nevada and Utah
57. New Mexico and Arizona
58. North Dakota
59. Northern California
60. Northern Michigan
61. Northern Texas
62. Oklahama
63. Olympia
64. South Dakota
65. Southern Florida
66. Spokane
67. The Platte
68. Western Colorado
69. Western Texas
70. Wyoming and Idaho
71. China (Shanghai and Yang Tse Valley [see § 12 note 25 No. 63])
72. Japan (see § 12 note 25 No. 64)
73. Western Africa (Cape Palmas and Parts adjacent)

[There are also missions for Haiti, Mexico, Cuba, Brazil and for the American churches in Europe. A bishopric for Greece which existed in 1891 seems not to have been continued.]

Of these the oldest foundations (see conspectus prefixed to Wilberforce, Hawkins, *Historical Notices*, app. F.) are:—Connecticut (1784), Pennsylvania (1787), New York (1787), Virginia (1790), Maryland (1792), South Carolina (1795), New Hampshire and Massachusetts (1797; this district was expanded in 1811 into the 'Eastern Diocese' by the addition of Rhode Island and Vermont), New Jersey (1815), Ohio (1819), North Carolina (1823), Vermont (1832), Kentucky (1832), Tennessee (1834), Illinois (1835), Indiana, Wisconsin and Iowa (1835), Michigan (1836), Louisiana (1838), Western New York (1839), Georgia (1841), Maine and Rhode Island (1843), New Hampshire (1844), Alabama (1844), Missouri (1844), Arkansas (1844), Amoy [China] (1844), Turkish Dominions (1844). Many districts did not express their adhesion to the general convention at the time of the foundation of the see; others joined it before the foundation.

II. Sources of Ecclesiastical Law.

§ 14.

1. GENERAL.

During the Anglo-Saxon period civil and ecclesiastical authority worked everywhere in concert. In the absence of any conflict between the two, the fundamental questions as to the recognition of ecclesiastical laws by the state remained undecided.[1] The idea that resolutions of wider communities are directly binding on a narrow, restricted one was not fully developed. Thus even the clergy did not perhaps account themselves legally bound by the resolutions of general councils.[2] They obeyed them, however, just as they observed the judgments of notable local councils abroad, as expressing the collective opinion of esteemed persons. The subordination of the clergy to the pope and his commands was more strict in the

[1] Compare, for instance, *Ine* (king of Wessex, 688 to 726–28; perhaps the text is Alfred's revision of Ine's laws) c 1: First we bid that the servants of God duly observe the laws. Then we bid that the laws and ordinances of the whole people be likewise duly observed. *Æthelred* (council of Ensham, 1006–11) VI, c 51: And if for a spiritual penance (*god-bôtan*) a money penance (*feoh-bôt*) becomes payable, such penalty as wise temporal law-givers (*wise worold-wîtan*) fix for punishment, then shall this rightly and according as the bishops think fit be devoted to the purchase of prayers and to the profit of the poor and . . . never to vain worldly ornaments, but as temporal penalty for spiritual wants (*ac for worold-steôran tô godcundan neôdan*) etc.

[2] This view is supported, for example, by the following occurrences: (i) At the council of Herutford, 673 (Beda IV, 5; printed in Haddan and Stubbs, *Councils* III, 118 ff.), Theodore, archbishop of Canterbury, asked those present *si consentirent, ea quae a patribus canonice sunt antiquitus decreta custodire.* They answered, *optime omnibus placet, quaequae definierunt sanctorum canones patrum, nos quoque omnes alacri animo libentissime servare.* Theodore then produced a book of canons (probably the collection of Dionysius Exiguus, H. and St. III, 121, note) and caused them to accept ten specially selected from the book. (That stress was laid on these resolutions is to be explained by the fact that only in 664 had the schism in the church been healed by the council of Streoneshalch.) (ii) Acceptance of the first five general councils at *Haethfelth*, 680 (Beda IV, 17, 18, in Haddan and Stubbs III, 141 ff.): *Suscepimus sanctas et universales quinque synodos beatorum et Deo acceptabilium patrum; id est . . . , et synodum quae facta est in urbe Roma, in tempore Martini Papae* (*i.e.* the Lateran council of 649, not a general council). . . (iii) Opposition of the western churches under Charlemagne at the mainly Frankish council of Frankfurt, 794, to the resolutions of the general council of Nicaea, 787, touching the adoration of images.

Anglo-Saxon kingdoms in which the church had been founded by Roman missionaries, that is in the southeast. The greater independence of the church in the northern kingdoms was first broken by the council of Streoneshalch (664) and by the administration of archbishop Theodore of Canterbury (668–690). Instances occur of popes issuing decrees upon their own sole authority ;[3] but as a rule, when the missionary stage was passed, the supreme pontiff avoided coming to important decisions without the concurrence of the Anglo-Saxon clergy and of the executive of the state.[4] When he made the attempt, he did not always carry his point.[5]

The canon law gained a hold in England through the ordinance of William I whereby it was laid down that the ecclesiastical courts in the cases referred to them by that ordinance should decide *secundum canones et leges episcopales*, whilst secular courts had to give judgment *secundum hundret*, that is, according to the law of the land. By *canones et leges episcopales* was probably understood the whole body of church law, whether of native or of foreign origin, as it was comprised in the collections of Burchard of Worms and others, and disseminated in England mainly through the agency of the Norman bishops.[6]

Ecclesiastical law then of every kind was recognized by the state as authoritative, but within a sphere which the state itself marked out. Beyond that limit it was not acknowledged. This state of affairs lasted until the reformation. It might indeed be doubted how far John's submission to the suzerainty of the pope involved, for a time, the right of the latter to make ordinances in temporal matters. In point of fact, at all events, the secular courts from the first paid no regard to any possible right of the kind. And even the principle of papal control in things temporal was soon dismissed.[7] As parlia-

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[3] *E.g.* the instructions of Gregory I and Honorius I as to the delimitation of the metropolitan districts. At that time, however, the country was still, for the most part, pagan; moreover, Gregory's instructions remained unexecuted.—Compare also the councils of *Pincahala* and *Celchyth*, 787 (Haddan and Stubbs, *Counc.* III, 447) c 8: *Ut privilegia antiqua a sancta Romana sede delata Ecclesiis omnibus conserventur.* . . . On such privileges, the genuineness of which is, however, in some cases disputed, cf. Haddan and Stubbs III, 461 note *k*, and Stubbs, Introduction to *Epistolae Cantuarienses* (*Rer. Brit. Scr.* No. 38, vol. II) pp. xxvii ff.

[4] Compare, for instance, § 33 near notes 13 ff. as to the events connected with the raising of Lichfield to an archbishopric and the subsequent abolition of this archbishopric.

[5] An instance of failure is in the papal decision upon the first appeal of Wilfrid (678) against the division of his bishopric by archbishop Theodore.

[6] Philipps, *Engl. Rechtsgesch.* I, 252 ff. Upon the several collections see Richter, *Kirchenrecht* § 53. Burchard's collection was made between 1012 and 1022. Ivo of Chartres, to whom other considerable collections are ascribed, died in 1115 or 1117. The extent to which, *e.g.*, the so-called *leges Henrici I* (a law-book, probably dating from 1110–18) use these collections of canon law is exhibited by the references in Schmid, *Gesetze der Angelsachsen*, which, however, are to be corrected according to the statements of Liebermann in *Forschungen zur Deutschen Geschichte* XVI, 582.

[7] In the year 1366, at latest. Compare § 28, note 1. On the refusal of the temporal magnates in 1236 to introduce as law of the land a *legitimatio per*

ment entered the lists against the temporal power of the pope, so also did it oppose the influence of the English church councils on civil law. Edward III in 1377 declared at the suit of the lower house that without its assent no law and no ordinance should be promulgated on petition of the clergy.[8]

It was, of course, a fixed rule that civil courts in the sphere of their competence could only be guided by secular law. Thus the issue between the ecclesiastical and the civil tribunals turned solely on the question how far the former were competent.[9]

The authorities of the church during this period regarded as binding, in the majority of cases, all the laws of the church, general or English,[10] at variance with secular law or in agreement with it.

In this period as in the preceding one we have the feature that resolutions of general councils were repeated at English synods. But this repetition perhaps implied no more than a publication or an emphasizing of legal forms already binding. Opposition on the part of the synod found expression merely in the shape of a petition to the pope for dispensation.[11] The collection of Gratian (1141–50)

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subsequens matrimonium, corresponding to the principle of church law, see § 60, note 96.

[8] Petition of the commons 51 *Ed. III* (1376/77), *Rotuli Parliamentorum* II, 368, No. 46: *Item suppliont les dites Communes au Roi lour Seigneur, que null Estatut ne Ordenance soit fait ne grante au Petition du Clergie si ne soit par assent de voz Communes; Ne que voz dites Communes ne soient obligez par nulles Constitutions q'ils font pur lour avantage sanz assent de voz dites Communes. Car eux ne veullent estre obligez a null de voz Estatutz ne Ordenances faitz sanz lour assent.* King's answer: *Soit ceste matire declaree en especial.* Cf. Petition of the commons 18 *Ed. III* (1344), *Rotuli Parliam.* II, 149, No. 8: *Item prie la Commune, que nulle Petition faite par la Clergie, que soit en decresce ou damage des Grantz ou de la Commune, soit grantez, tan que il soit triez par le Roi et tout son Conseil, que saunz damage des Grauntz et de sa Commune bonement se peusse tenir.* Answer of the king and the magnates in parliament: *Quant al oytisme Article, Il plest au Roi et a son Conseil que ensi soit.*—As to the question whether in the period of transition from the beginning to the end of the fourteenth century the assent of the representatives of the towns and shires to ordinances issued on petition of the clergy was considered requisite, see Stubbs, *Const. Hist.* II, 626 f. c 17 § 293.

[9] On this point compare § 60.

[10] Essential uniformity in legal matters for the northern and the southern province was established by a resolution of the northern convocation in 1463:—*Memorandum quod praelati et clerus in Convocatione*, 1463, *concedunt unanimiter quod effectus constitutionum provincialium Cantuariensis Provinciae ante haec tempora tent. et habit. constitutionibus Provinciae Eboracensis nullo modo repugnantium seu praejudicialium et non aliter nec alio modo admittantur; et quod hujusmodi constitutiones Provinciae Cantuariensis, et effectus earundem, ut praefertur, inter constitutiones Provinciae Eboracensis prout indiget et decet inserantur, et cum eisdem de caetero servandae incorporentur et pro jure observentur.* (Printed in Trevor, *The Convocations of the two Provinces* p. 84 after *Reg. Bothe Arch. Ebor.*)—A convocation of 1466 (archb. Nevill) adopted in like manner various constitutions of Canterbury.

[11] For instance, at the council of *Oxford*, 1222, c 50 the resolutions of the fourth (general) Lateran council (1215) were accepted: . . . *Lateranense concilium sub sanctae recordationis papa Innocentio celebratum, in praestatione decimarum et aliis capitulis firmiter praecipimus observari* . . . (Wilkins, *Concilia* I, 585.)—The popes recognized in general the right of the

and the other books of canon law made their way into England soon after their appearance. Nevertheless the acceptance here of the general rules of church law as contained in such books was not absolutely unconditioned. Nay, to some of the provisions effect was not permanently given even by the ecclesiastical courts.[12] The dictum, moreover, was sometimes pronounced even at this period that ordinances and resolutions of a general council were under certain circumstances only binding if they had been formally adopted in England.[13] This was an after-effect of the views which had prevailed at an earlier time; and these earlier views were in course of the reformation again generally accepted.

The reformation produced a change in the sources from which ecclesiastical law was derived.

Henceforth became inoperative: (1) papal ordinances; this was a natural consequence of the transference of the supremacy to the English kings; (2) resolutions of general councils, it being now commonly held that England was not bound by such resolutions unless English councils had expressed assent to them.[14] In lieu of

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lower authorities to raise objection for special reasons to regulations which in themselves were binding, and to call for the decision of the papal see. c 5 Decretals of Gregory IX (*lib. Extra*) I, 3. Richter, *Kirchenrecht* § 166, note 6 Compare, *e.g.*, Matthaeus Paris. *Chron. Majora* (*Rer. Brit. Scr.* No. 57) III, 418 f., year 1237, upon the appeal on the part of the English bishops for a papal decision when the legate Otho, in accordance with the provisions of the Lateran council IV, wished to issue an ordinance against pluralities. Archbishop Peckham, in the introduction to his constitutions, published at the provincial synod of Lambeth, 1281, observes (Wilkins, *Concilia* II, 51): . . . *Et quia Lugdunense concilium* (the 14th general, 1274) *ultimo celebratum, eo enormius, quo recentius infringitur; ne quis possit se in temeritate hujusmodi per ignorantiam excusare, ipsum volumus in principio recenseri; non solum ut omnibus innotescat, verum etiam, ut si quid in ipso videatur intolerabile istius regionis consuetudini, quae in multis ab omnibus aliis est distincta, circa illud temperamentum apostolicae clementiae humiliter imploretur.*

[12] Examples of provisions of canon law not accepted in England will be found in Gibson, *Codex*, Introduction p. 27.

[13] Johannes de Actona, p. 37, gloss. to c 14. Const. Otho (1237), in which the bishops were directed to enforce the ordinance of a general council: *Tunc haec constitutio vel concilium . . . nunquam acceptabatur a subditis in hac parte, igitur non videtur arctare.* He adds a somewhat long explanation of the cases in which the assent of smaller communities is requisite to make a general law valid in their district.

[14] It was on this point that the first dispute of Henry VIII with the clergy turned (1515). Dr. Standish and Dr. Vesey maintained that England was not bound by canons which had never been adopted here. Cf. Perry, *Hist. of Engl. Ch.* II, 23 c 2 § 13; also, p. 24, note 1, for the question how far the details of the quarrel are historically authenticated.—After the reformation the resolutions of all so-called general councils after the eighth general (ecumenical) council (the fourth of Constantinople, 869) were held not to be directly binding for the further reason that the eastern church, also a part of the universal church, was not represented thereat. Phillimore, *Eccles. Law* 1921.—The convocation of Canterbury in a declaration of July 20th, 1536 (Wilkins, *Concilia* III, 808) laid down that a true general council could only be summoned with the assent of all independent Christian princes: *We think that neither the bishop of Rome, nor any one prince, of what estate, degree or preeminence soever he be, may by his own authority call, indict, or summon any general council, without the express consent, assent, and agreement of the residue of christian princes,*

these came royal ordinances of ecclesiastical import, designated, for the most part, 'injunctions.' The higher church officers issued independently, now as before, their general mandates. Legislative powers were left to the convocations, but their resolutions required the king's licence and assent;[15] furthermore, it was provided that they were not entitled to make or put into execution any canon repugnant to the king's prerogative or the law of the land.[16]

Such rules of ecclesiastical law as were already in force were to continue valid, in so far as they were not in conflict with royal pre-

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and especially such as have within their own realms and seigniories 'Imperium merum,' that is to say, of such as have the whole intire and supreme government and authority over all their subjects, without knowledging or recognizing of any other supreme power or authority; . . . —Cf. further art. 21 of thirty-nine articles, appendix XI.

With reference to the Vatican council of 1870 the upper house of the convocation of Canterbury resolved (16th June, 1871; *Chron. of Conv. Cant.* 1871, pp. 441 ff.):—

That the Vatican Council has no just right to be termed an Oecumenical or General Council, and that none of its decrees have any claim for acceptance as canons of a General Council.

That the dogma of Papal Infallibility now set forth by the Vatican Council is contrary to Holy Scripture, and to the judgment of the ancient Church universal.

That the assumption of supremacy by the Bishop of Rome in convening the late Vatican Council contravenes canons of the universal Church.

That there is one true Catholic and Apostolic Church, founded by our Lord and Saviour Jesus Christ; that of this true Catholic and Apostolic Church the Church of England and the Churches in communion with her are living members; and that the Church of England earnestly desires to maintain firmly the Catholic faith as set forth by the Oecumenical Councils of the universal Church, and to be united upon those principles of doctrine and discipline in the bonds of brotherly love with all Churches in Christendom.

The lower house of the province of Canterbury had on Feb. 15th, 1871, passed a resolution identical with the above excepting a few words in the last sentence of the paragraph, which run: *to maintain firmly the Catholic faith and discipline as declared and settled by the undisputed Councils of the universal Church. Chron. of Conv.* 1871, p. 143. Compare also the report of the committee in *Appendix to Chron. of Conv.* 1871, where it is declared that the members of the Vatican council were not free because they were bound by the oath of obedience to the bishop of Rome customary in the Roman catholic church, the words of the oath being: *Papatum Romanum . . . adjutor ero ad retinendum contra omnem hominem* and *Haereticos, schismaticos, et rebelles Domino nostro (Papae) pro posse persequar et impugnabo.*

[15] Compare § 54, note 56.

[16] 25 *Hen. VIII* (1533/4) c 19 (*Act of Submission*) s 3: *Provyded alway that no canons constitucions or ordynaunce shalbe made or put in execucion within this Realme by auctorytie of the convocacion of the clergie, which shalbe contrayant or repugnant to the Kynges prerogatyve Royall or the customes lawes or statutes of this Realme; . . .* This act was repealed by 1 & 2 *Phil. & Mary* (1554 and 1554/5) c 8 s 3, revived by 1 *Eliz.* (1558/9) c 1 § 2. According to an opinion of the judges (compare § 54, note 56) canons are inoperative even after receiving royal assent if they offend in the respects indicated. The principle that laymen are not bound by any resolutions of church councils unless ratified by parliament was upheld by the courts especially during the struggle against the canons of 1604, and has remained since then a fixed basis of legal decisions.

rogative or secular law.[17] At the same time it was proposed to subject all canons, constitutions and ordinances to revision, and to publish them afresh after the objectionable ones had been discarded. With this object in view Henry VIII was empowered by 25 *Hen. VIII* (1533/4) c 19 s 2 to appoint a commission of thirty-two, sixteen of the clergy and sixteen members of the upper or lower house of parliament. As soon as the conclusions of this commission had received the royal assent and been published, the newly issued canons and no others were to have force. The time within which the commission was to be appointed was twice prolonged.[18] Only after this delay were the appointments made. For reasons now unknown, the determinations of the commission were never ratified by the king.[19] At a later date Edward VI was authorized to nominate a commission for the same purpose,[20] and he availed himself of the powers so conferred.[21] But again the work of the commission—we know not why—never received royal confirmation.[22] In the reign of

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[17] 25 *Hen. VIII* c 19 s 7: *Provided also that suche canons constitucions ordynaunces and Synodals provynciall being allredy made, which be not contraryant nor repugnant to the lawes statutes and customes of this Realme nor to the damage or hurte of the Kynges perogatyve Royall, shall nowe styll be used and executed as they were afore the making of this acte, tyll suche tyme as they be vyewed serched or otherwyse ordered and determyned by the seid* 32 *persons* . . . This act was repealed by 1 & 2 *Phil. & Mar.* c 8 s 3, revived by 1 *Eliz.* c 1 s 2.—A similar provision is found in 35 *Hen. VIII* (1543/4) c 16 s 2. Compare the articles of queen Mary, March 4th, 1554 (Cardwell, *Doc. Ann.* I, 111) art. 1: *That every bishop and his officers, with all other having ecclesiastical jurisdiction, shall with all speed and diligence, and all manners and ways to them possible, put in execution all such canons and ecclesiastical laws heretofore in the time of King Henry VIII used within this realm of England, and the dominions of the same, not being direct and expressly contrary to the laws and statutes of this realm.*—In 37 *Hen. VIII* (1545) c 17 it is declared that by 25 *Hen. VIII* c 19 those provisions which prevented lay and married doctors of civil law from exercising ecclesiastical jurisdiction were abolished as contrary to the royal prerogative.

[18] 27 *Hen. VIII* (1535/6) c 15 *An Acte whereby the Kynges Magestie shall have power to nominate* 32 *personnes of his Clergie and Lay fee for makyng of Ecclesiasticall Lawes* (this act was repealed by 1 & 2 *Phil. & Mar.* [1554 and 1554/5] c 8 s 4); 35 *Hen. VIII* (1543/4) c 16 *A Bill for thexamination of Canon Lawes by* 32 *personnes to be named by the Kinges Majestie*, s 1 prolongs the powers, not yet exercised, for the king's lifetime.

[19] According to Strype, *Cranmer* I, 190 the commission ended its work; so that nothing was wanting except the king's confirmation.

[20] 3 & 4 *Ed. VI* (1549/50) c 11 *An Acte that the Kinges Majestie maye nominat* 32 *persons to peruse and make Ecclesiasticall Lawes.*

[21] Edward's commission (11th Nov. 1551) appointing eight persons is printed in Cardwell, *Doc. Ann.* I, 95.—Strype, *Cranmer* I, 388 relates, on the authority of an original document, that on October 6th, 1551, a commission of thirty-two persons was nominated, from whom were selected the eight named in the commission of Nov. 11th. Cardwell, *The Reformation of the Ecclesiastical Laws* p. viii, doubts the correctness of Strype's statement, basing his opinion on the language of the November commission.

[22] According to Strype, *Cranmer* I, 389 the commission, on this occasion too, completed its work. Cardwell, *Reform. of Eccl. Laws* p. ix, assumes that the task was not finished, at all events in the three years for which 3 & 4 *Ed. VI* c 11 conferred powers. He supports this view by the fact that in the MS. corrected by Cranmer, which is still preserved, eight sections are wanting which

Elizabeth a suggestion was raised that this work—the *reformatio legum ecclesiasticarum*—should be carried to a conclusion; but no legislation to that effect took place.[23] Since that time the plan of a general examination of the rules of ecclesiastical law has never again been adopted.

§ 15.

2. THE BOOK OF COMMON PRAYER.[a]

The English prayer-book is not merely the chief authority upon the manner of celebrating divine service; it contains in its rubrics and

are contained in the issue of 1571. A bill to prolong the authority was prepared, but never became law. See Cardwell, *l.c.* with note *f*.

[23] Burnet, *Hist. of Reformation* Ed. 1865 II, 626, relates that, in the first parliament (1559) of Elizabeth, a bill for giving authority to thirty-two persons to revise the ecclesiastical laws was laid aside at the second reading in the house of commons and was not subsequently revived.—In 1571 a sketch of a revised code of ecclesiastical law, based on the labours of the earlier commissions but with additions, was printed privately, but never received the force of law. Reprinted in Cardwell, *The Reformation of the Eccles. Laws as attempted in the Reigns of King Henry VIII, King Edward VI and Queen Elizabeth*, Oxford, 1850. The edition of 1571 was discussed in parliament the same year, but no final resolution was arrived at in respect thereto. Cardwell, *l.c.* p. xii.

[a] I. Divine service before the Reformation.

Maskell, William. *Monumenta Ritualia Ecclesiae Anglicanae. The occasional Offices of the Church of England according to the old use of Salisbury the Prymer in English and other prayers and forms, with dissertations and notes.* 3 vols. 2nd Ed. Oxford, 1882.—The same. *The Ancient Liturgy of the Church of England, according to the uses of Sarum, York, Hereford and Bangor, and the Roman Liturgy arranged in parallel columns, with preface and notes.* 3rd Ed. Oxford, 1882.—Palmer, William. *Origines Liturgicae, or Antiquities of the English Ritual, and a dissertation on primitive liturgies.* 2 vols. 4th Ed. London, 1845.—Warren, F. E. *The Liturgy and Ritual of the Celtic Church.* Oxford, 1881.—The same. *The Leofric Missal, as used in the Cathedral of Exeter during the episcopate of its first bishop, 1050–72; together with some account of the Red Book of Derby, the Missal of Robert de Jumièges and a few other early Manuscript Service Books of the English* (=Anglo-Saxon) *Church.* Oxford, 1883.

II. Since the Reformation. History of prayer-book.

Brice, Seward. *The Law relating to Public Worship; with especial regard to matters of Ritual and Ornamentation, and to the means for securing the due observance thereof.* London, 1875. (Contains the relevant civil and ecclesiastical enactments.)—Campion, W. M. and Beamont, W. T. *The Prayer Book Interleaved, with historical illustrations and explanatory notes arranged parallel to the text.* Last edition. London, 1888.—Cardwell, Edward. *The two Books of Common Prayer set forth by authority of Parliament in the reign of King Edward VI compared with each other.* Oxford, 1838. (The two texts printed side by side.)—As a continuation: *A History of Conferences and other Proceedings connected with the revision of the Book of Common Prayer from* 1558 *to* 1690 (containing many documents). Oxford, 1840.—Cay. *An Historical Sketch of the Prayer Book.* London, 1849.—The same. *The Book of Common Prayer illustrated; so as to shew its various modifications, the date of its several parts, and the authority on which they rest.* London, 1841.—Dowden, John. *An Historical Account of the Scottish Communion Office and of the Communion Office of the Protestant Episcopal Church of the United States of America, with Liturgical Notes.* Edinburgh, London, New York, 1884.—Eyre and Spottiswoode (printers). *The Book of Common Prayer from the original manuscript attached to the Act of Uniformity of* 1662. *With three appendices* by James Cornford. London, 1893.—Gasquet, Francis Aidan and Bishop, Edmund. *Edward VI and the Book of Common Prayer. An examination into its origin and early history with an Appendix of unpublished documents.* London, 1890.—*Hierurgia Anglicana; or documents and extracts illustrative of the Ritual of the Church of England after the Reformation; edited by members of the Ecclesiological, late Cambridge Camden, Society.* London, 1848.—Keeling, William. *Liturgiae Britannicae, or the several editions of the Book of Common Prayer of the Church of England, from its compilation to the last*

in the catechism inserted in it statements which, apart from inferences to be drawn or supposed to be deducible therefrom as to doctrine, express or imply binding rules in regard to the constitution of the church. It is on this account that we are justified in dwelling on the history of its origin.[1]

1. An uniform prayer-book for England was first introduced by 2 & 3 *Ed. VI* (1548) c 1 (*An Act for the Uniformity of Service and Administration of the Sacraments*). The preliminary labours with this object in view had been begun in 1542, and regulations had been made (mostly by royal ordinance) upon various portions of the service to be adopted.[2] By 3 & 4 *Ed. VI* (1549/50) c 12 (*An Act for the ordering of Ecclesiastical Ministers*) the elaboration of rules, not contained in the prayer-book of 1548, for 'the making and consecrating of archbishops, bishops, priests, deacons and other ministers of the church' was entrusted to a commission to be named by the king, consisting of six prelates and six others 'learned in God's law,' and the use of the form devised by them and set forth under the great seal before the 1st of April next ensuing, was prescribed beforehand. The ordinal was duly brought to the council on February the 28th in the same year.

2. The second prayer-book of Edward VI is a revision of the first prayer-book of 1548, with the ordination service of 1550 amended and introduced as an appendix. Its use was enforced by

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[1] On the old British liturgy (after 429) see Haddan and Stubbs, *Counc.* I, 138; on divine service in Anglo-Saxon times Phillips, *Angelsächsische Rechtsgeschichte* § 68. To an inquiry from Augustine pope Gregory made answer in 601 (Haddan and Stubbs III, 19): *Novit fraternitas tua Romanae ecclesiae consuetudinem, in qua se meminit nutritam. Sed mihi placet, sive in Romana, sive in Galliarum, seu in qualibet ecclesia aliquid invenisti quod plus omnipotenti Deo possit placere, sollicite eligas, et in Anglorum ecclesia, quae adhuc ad fidem nova est, institutione praecipua, quae de multis ecclesiis colligere potuisti, infundas. Non enim pro locis res, sed pro bonis rebus loca amanda sunt. Ex singulis ergo quibusque ecclesiis, quae pia, quae religiosa, quae recta sunt elige, et haec quasi in fasciculum collecta, apud Anglorum mentes in consuetudinem depone.* Accordingly Augustine arranged a service which in some points differed from the Romish ritual. The use of the *litania major* was prescribed at the council of Clovesho, 747 (Haddan and Stubbs III, 362) c 16. The liturgy was at a later time altered in different ways in the several dioceses; thus special *usus* came into existence. Most widely spread during the middle ages was the *usus Sarisburiensis*, composed about 1085 by Osmund, bishop of Salisbury (1078–99). The preamble to 2 & 3 *Ed. VI* c 1 mentions specially as precursors the 'uses of Sarum, of York, of Bangor and of Lincoln.' For more as to the service-books in use before the reformation see Procter, *Hist. of Prayer Book*, appendix to chapter I.

[2] Detailed information will be found in Procter, *Hist. of Prayer Book* c 2.—The first prayer-book of Edward VI rests on the preliminary labours of a committee of the convocation of Canterbury. Probably it was accepted by both convocations. Compare Perry, *Hist. of Engl. Church* II, 196, note 2 c 11 § 22.

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revision; together with the Liturgy set forth for the use of the Church of Scotland (1637); *arranged to shew their respective variations.* 2nd Ed. London, 1851.—Lathbury, Thomas. *History of the Book of Common Prayer and other Books of authority.* Oxford, London, 1858. —Procter. *A History of the Book of Common Prayer.* 18th Ed. London, 1889.—Swainson, C. A. *The Parliamentary History of the Act of Uniformity* 13 & 14 *Car. II* c 4, *with illustrations from documents not hitherto published.* London, 1875.

5 & 6 *Ed. VI* (1551/2) c 1 (*An Act for the Uniformity of Common Prayer and Administration of the Sacraments*).[3]

3. By 1 *Mar.* st. 2 (1553) c 2 the three acts mentioned were repealed and divine service was ordered to be performed as in the last year of Henry VIII.

4. A month after her accession Elizabeth by proclamation (1558) directed that, for the time being, the form of service 'already used and by law received' should remain in force.[4] At the same time, however, she appointed a commission to revise the second prayer-book of Edward VI. By 1 *Eliz.* c 2 (*Act of Uniformity*, 1558/9) the second prayer-book of Edward VI, with some alterations to meet the wishes of the adherents of the old faith, was restored.[5] The ornaments of the church and of the ministers thereof were to be such as were in use by authority of parliament in the second year of king Edward VI (that is, in the time of the first prayer-book). But the right was reserved to the queen, with the advice of the high commission or of the archbishop of Canterbury, both to make other regulations as to the ornaments of the church and the ministers, and also to alter the service prescribed in the prayer-book by the addition of new ceremonies.[6]

The only use the queen seems to have made of this authority was to issue in 1561 an ordinance empowering the high commissioners to deliberate upon the lessons appointed to be read and upon the proper ornamentation of the chancel, and to take the necessary measures for improving both forthwith.[7] The consequence was a reform of the lectionary.

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[3] As to the preliminary labours and the question how far the convocations were concerned therein see Perry II, 208–212 c 12 §§ 8 ff.

[4] The proclamation (27th December, 1558) is printed in Cardwell, *Doc. Annals* I, 176.

[5] Perry II, 261 c 15 § 13 (cf. also II, 501 c 32 notes and illustrations) holds against Procter c 3 that some of the alterations were not authorized by parliament, but made by the queen and her council on publication.—5 *Eliz.* (1562/3) c 28 lays down that in Welsh dioceses the prayer-book shall be used in a Welsh translation.—On the introduction of the prayer-book into Ireland compare § 11, notes 17, 20, 26.

[6] s 13: *Provided alwaies and bee it enacted, That suche Ornamentes of the Churche and of the Ministers therof, shall bee reteyned and bee in use as was in the Churche of Englande by aucthorite of Parliament in the seconde yere of the Reigne of king Edwarde VI, untill other order shalbe therin taken by thaucthorite of the Quenes Majestie, with the advise of her Commissioners appointed and aucthorised under the Greate Seale of Englande for Ecclesiasticall Causes, or of the Metropolytan of this Realme; And also that yf ther shall happen any Contempte or Irreverence to be used in the Ceremonies or Rites of the Churche by the misusing of thorders appointed in this Booke, the Queenes Majestie maye by the like advice of the said Commissioners or Metropolitan ordeyne and publishe suche further Ceremonies or Rites as maye bee most for thadvancement of Goddes glorye, the edifieng of his Church and the due Reverence of Christes holye Misteries and Sacramentes.*

[7] Cardwell, *Doc. Ann.* I, 260.—Procter, *Hist. of Prayer Book* p. 59, note 1, gives as also made under this authority an alteration in the collect for St. Mark's day, probably not later than 1564, and some inconsiderable verbal alterations, certainly not later than 1572.—It has moreover been disputed whether another ordinance of Elizabeth's time, the *advertisements* of 1566

As question was raised whether the form of consecration[8] published separately and not expressly mentioned in the act had received legal sanction, this was expressly declared by 8 *Eliz.* (1566) c 1.[9]

5. James I, in connexion with the discussions at the Hampton Court conference, by ordinance dated 9th February, 1604, and addressed to the ecclesiastical commissioners, approved the alteration of the prayer-book in certain minor points and ordered the book to be printed with these alterations.[10] By proclamation of the 5th March, 1604, he enjoined the general use of this book of common prayer as 'the only public form of serving of God, established and allowed to be in this realm.'[11] The ordinance mentioned is stated explicitly to be issued in virtue of the rights of supremacy and of the reservation made under 1 *Eliz.* c 2. Nevertheless it appears doubtful whether the ordinance and the proclamation were of binding force.

6. During the first revolution, parliament passed provisional ordinances (the first on the 2nd of October, 1644) nominating for London and the neighbourhood and for the county of Lancaster commissions of presbyters with power 'to examine and ordain by imposition of hands all those whom they shall judge qualified to be admitted into the sacred ministry.' Similar ordinances followed, whose scope extended to the whole of England.[12]

About the same time the Westminster assembly of divines[13] summoned by parliament was deliberating upon an amendment of the prayer-book in use and the establishment of a common form of service for all Great Britain. The 'directory' agreed to by the assembly was introduced into England and Wales instead of the

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(printed in Cardwell, *Doc. Ann.* I, 287, erroneously under the year 1564; as to the date see Perry, *Hist. of Engl. Ch.* II, 289, note 2 c 17 § 6) are covered by the act 1 *Eliz.* c 2. It seems now, however, to be proved that the advertisements were issued by the archbishop without royal sanction, and consequently were invalid in so far as they are in opposition to the prayer-book. Compare Cardwell, *l.c.* I, 287, note; Perry, *l.c.* II, 287 ff., 300 c 17 §§ 5 ff. III, 401–3 c 22 §§ 14 ff. (Elphinstone *v.* Purchas, 1870), 488–91 c 29 §§ 5 ff. (Clifton *v.* Ridsdale, 1877), 492 ff. c 29 §§ 13 ff.

[8] The Elizabethan form of consecration contained, as compared with that of Edward VI, only a change in the supremacy oath.

[9] *An Acte declaringe the manner of makinge and consecratinge of the Archbushopes and Busshops of this Realme to be good lawful and parfecte.*—s 1: . . . *declared and enacted . . . that suche Order and Fourme for the consecrating of Archbyshops and Byshops, and for the making of Preistes Deacons and Minysters, as was set foorthe in the tyme of . . . kyng Edward the Syxte and added to the sayd Booke of Common Prayer and aucthorised by Parliament in the fyfth and syxth yere of the sayd late kyng, shall stande and be in full Force and Effect . . .*

[10] Cardwell, *Hist. of Conferences* p. 217. The ordinance contains an exact statement of the several alterations.

[11] Cardwell, *Doc. Ann.* II, 56 and Wilkins, *Concilia* IV, 377.

[12] Neal, *Hist. of the Puritans*, Ed. of 1822, III, 126 ff. Ordinance of 8th September, 1645 (printed in Rushworth, *Hist. Coll.* pt. IV vol. I p. 212) and the ordinances mentioned in § 7, note 46. According to Neal, *l.c.* III, 124, the bishops had refused to ordain any who were not in the interest of the crown.

[13] Compare § 7, note 41.

book of common prayer by a parliamentary ordinance of the 3rd of January, 1645.[14] An ordinance of the 23rd of August, 1645, added the threat of penalties for the use of the old or the non-use of the new service-book.[15] The king, on the other hand, by his proclamation of November the 13th forbade the adoption of the directory and threatened with punishment those who should lay aside the book of common prayer.[16]

By a parliamentary ordinance of the 29th of August, 1648, the ordination of ministers by the classical assemblies, established in the meantime or still to be established, was more definitely regulated according to the proposals of the Westminster assembly of divines.[17] When Cromwell had become protector he constituted, under date of March the 20th, 1654, commissioners for approbation and admission, to admit in non-ecclesiastical form those presented, nominated, chosen or appointed to any benefice by a patron.[18]

7. All the ordinances mentioned of the parliament and of Cromwell were treated after the restoration as null and void, because lacking the royal consent. But Charles II promised in his declaration of October the 25th, 1660, concerning ecclesiastical affairs, to tolerate deviations from the old prayer-book until a new revision of it could be made.[19] The Savoy conference (1661) between clergy of the episcopal church and puritan ministers, brought about by the

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[14] Printed in Scobell, *l.c.*: *An ordinance for taking away the Book of Common prayer and for establishing and putting in execution of the Directory for the publique worship of God.* The text of the directory is incorporated in the ordinance, and is also printed in Neal, *Hist. of Puritans*, appendix VIII. The title runs: *A Directory for Publique Prayer, Reading the Holy Scriptures, Singing of Psalmes, Preaching of the Word, Administration of the Sacraments, and other parts of the Publique Worship of God, Ordinary and Extraordinary.* The directory contains no ordinal.—In Scotland the directory was adopted by resolution of the general assembly, 3rd Feb. 1645 (*Acts of General Assembly* p. 115).

[15] Scobell, *l.c.*: *An Ordinance for the more effectual putting in execution the Directory for Publique Worship in all Parish Churches and Chappels within the Kingdom of England and Wales.*

[16] Proclamation printed in Rushworth, *Historical Collections*, part IV vol. I p. 207.—After the complete overthrow of the king, the bishops temporarily dispensed ministers from using the book of common prayer. Perry, *Hist. of Engl. Church* II, 482 c 31 § 12.

[17] Compare § 7, note 49.

[18] Ordinance of 20th March, 1645 (printed in Scobell): *For appointing Commissioners for approbation of Publique Preachers;* supplemented by protector's ordinance of 2nd September, 1654 (Scobell, c 59); the two ordinances are ratified by act of the Cromwellian parliament 1656 c 10 (in Scobell).

[19] Declaration printed in Cardwell, *Doc. Ann.* II, 234. c 7: . . . *though we do esteem the liturgy of the church of England, contained in the book of Common Prayer, and by law established, to be the best we have seen;* . . . *yet* . . . *we will appoint an equal number of learned divines of both persuasions, to review the same, and to make such alterations as shall be thought most necessary, and some additional forms* . . . *suited unto the nature of the several parts of worship, and that it be left to the minister's choice to use one or other at his discretion. In the mean time, and till this be done,* . . . *in compassion to divers of our good subjects, who scruple the use of it as now it is, our will and pleasure is, that none be punished or troubled for not using it, until it be reviewed, and effectually reformed, as aforesaid.*

king for the discussion of projected changes, yielded no result. On the other hand, 14 *Car. II* c 4 [20] (*Act of Uniformity*, 1662) adopted an amended prayer-book [21] based on a review of the old one by the convocations.[22] The changes, which extended to many details, were in a retrograde rather than a progressive direction.

8. The prayer-book of 1662 is still in use. Some minor alterations by the addition of forms for special occasions have been made by later royal ordinances.[23] The calendar prefixed to the prayer-book was altered by 24 *Geo. II* (1751) c 23, the act which introduced the Gregorian system into England. The prayer-book is moreover touched by two recent enactments, 34 & 35 *Vict.* (1871) c 37 *Prayer Book* [*Table of Lessons*] *Act* and 35 & 36 *Vict.* (1872) c 35 *Act of Uniformity Amendment Act*.[24] The former contains an amended table of lessons; the latter allows the use of certain shortened forms of morning and evening service, and lays down that, with the approval of the ordinary, special services not contained in the prayer-book, but which must only consist of parts of the Bible and the prayer-book and of anthems or hymns, may be used upon special occasions or as additional to the usual devotions, and that preaching a sermon is admissible when 'preceded by any service authorised by this Act, or by the Bidding Prayer, or by a collect taken from the Book of Common Prayer, with or without the Lord's Prayer.'

The manner of proceeding in disputes as to the form of worship to be observed is regulated by 37 & 38 *Vict.* c 85 (*Public Worship Act*, 1874).[25]

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[20] The act contains variations, probably made by the king and his council before the book was brought into parliament, from the review of convocation. But these alterations were expressly approved by the southern convocation after the act was passed. Cf. Perry II, 486–501 c 32 §§ 1 ff.—As to the introduction of the new prayer-book into Ireland cf. § 11, note 30.

[21] To the form of consecration etc. appended to the prayer-book reference is made in art. 36 of the thirty-nine articles.

[22] The members of the lower and upper house of Canterbury, and the members of the upper house and plenipotentiaries of the lower house of York, subscribed the review on 20th December, 1661. (See Wilkins, *Concilia* IV, 566, 567 ff., Trevor, *The Convocations of the two Provinces* p. 113.) The bishops of the northern province had deliberated with the upper house of Canterbury. The co-operation of the lower house of York was only formal, by representatives sent to London.

[23] So especially the appointment of forms of prayer for commemorating special days, the king's birthday etc. for instance. For examples see Clay, *The Book of Common Prayer Illustrated*, London, 1841, pp. xv–xvii and Lathbury, *History of Convoc.* 314, notes *d* and *e*. As a modern illustration compare the royal ordinances of 21st June, 1837, and 17th January, 1859, printed in many editions of the prayer-book.—Compare also the ordering of special yearly services by 3 *Jac. I* (1605/6) c 1 (5th Nov.) and 12 *Car. II* (1660) c 14 (29th May).

[24] In the preamble to the latter it is mentioned that the act is passed after the opinion of the convocations of Canterbury and York have been taken.

[25] The lower house of convocation had protested against the bill. Perry, *Hist. of Engl. Ch.* III, 483 c 28 § 12.

§ 16.

3. ARTICLES OF BELIEF [a]

From the time of the reformation the following articles of belief have been successively in vogue:—

1. The ten 'articles about religion set out by the convocation, and published by the king's authority' (1536).[1] These articles, issued after the legislative recognition of the king's supremacy (1534), constitute the first innovation in matters of belief. According to article 1 the foundations of faith are the Bible, the three ancient creeds and the resolutions of the four oldest general councils. Articles 2–5 relate to baptism, penance, the sacrament of the altar and justification. These first five articles are taken principally from the confession of Augsburg.[2] Three sacraments are acknowledged, viz. baptism, penance and that of the altar. Articles 6–9 deal with the worshipping of images, the adoration of saints and some other ceremonies; these are all retained, but the object of them is so explained that they appear harmless even from a protestant point of view. Article 10 repudiates the doctrine of purgatory, but allows prayer for the souls of the departed.

2. The 'Six Article law' (1539), passed to restrain further innovations, the danger of which was exhibited by the rising of the northern counties, and which seemed undesirable as, after the death of Catherine (1536) and the failure of the negotiations with the German protestants (1538), a political *rapprochement* between England and Charles V had been effected. The chief articles of the act [3] are:—

I. The doctrine of transubstantiation is to be approved.

II. Communion in both kinds is not necessary *ad salutem* to all persons.

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[1] Printed in Wilkins, *Concilia* III, 817. The document represents itself as a publication by the king after previous '*assent and agreement*' '*of our bishops and other the most discreet and best learned men of our clergy of this our* WHOLE *realm . . . assembled in our convocation.*' It is signed by Crumwell and members of the upper and of the lower house, of whom, however, but few belong to the northern province. The articles were originally printed in 1536 under the title: *Articles devised by the kinges highnes majestie to stablyshe Christen quietnes and unitie amonge us, and to avoyde contentious opinions; which articles be also approved by the consent and determinations of the hole clergie of this realme.*

[2] Ranke, *Englische Geschichte* 3rd Ed. I, 153.

[3] 31 *Hen. VIII* (1539) c 14 *An Acte abolishing diversity in Opynions.*

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[a] Browne, Edward Harold. *An Exposition of the Thirty-nine Articles, historical and doctrinal.* 13th Ed. London, 1887.—Hardwick, Charles. *A History of the Articles of Religion. To which is added a series of documents, from* 1536 *to* 1615; *together with illustrations from contemporary sources.* Cambridge & London, 1851. 3rd Ed. 1876.—Lamb, John. *An Historical Account of the* 39 *Articles from the first promulgation of them in* 1553 *to their final establishment in* 1571; *with exact copies of the Latin and English Manuscripts etc. . . .* Cambridge, London, Oxford, 1829.—Lloyd, Charles. *Formularies of Faith put forth by authority during the reign of Henry VIII, viz. Articles about Religion,* 1536. *The Institution of a Christian Man,* 1537. *A Necessary Doctrine and Erudition for any Christian Man,* 1543. Oxford, 1825. New edition. Oxford, 1856.

III. After the order of priesthood has been received marriage is not permissible.

IV. Vows of chastity or widowhood, made by men or women, ought to be observed.

V. It is meet and necessary that private masses be continued and admitted in the church.

VI. Auricular confession is to be retained.

Any person who upholds definite opinions in opposition to the first of these articles or merely believes such opinions to be true, is to be burned as a heretic and his property forfeited to the king. Corresponding offences against articles II–VI are—in certain more serious cases forthwith, in less serious cases upon relapse—to be punished as felony with death and forfeiture of property.

Although the details were subsequently somewhat modified, the main provisions of this act remained in force until the death of Henry VIII.[4] Not before the new sovereign's reign was communion in both kinds introduced[5] by statute (1 *Ed. VI* [1547] c 1); and the six article law was entirely repealed by 1 *Ed. VI* c 12 s 2.[6]

3. The forty-two articles (1553).[7] They were published by royal authority, probably upon the ground of their acceptance by a resolution of the southern convocation. They mark the complete prevalence of protestant views and so form a supplement to the second prayer-book which had been finished shortly before. A part of these articles is based on propositions agreed by Cranmer and German theologians in 1538 at a conference held to establish uniformity of belief.[8] The forty-two articles contained the answer of England to the fundamental resolutions framed at the first sessions of the council of Trent.

4. The eleven articles (1559).[9] They were drawn up by arch-

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[4] Compare § 22, notes 19 and 20.

[5] s 8: *not condempninge hereby the usage of anny Churche owt of the Kinges Majesties Dominions.*

[6] A further legislative determination of religious doctrines, but within the frame of the six articles, was made by 32 *Hen. VIII* (1540) c 26 and 34 & 35 *Hen. VIII* (1542/3) c 1.

[7] Printed in Cardwell, *Synodalia* p. 1, under the title: *Articuli, de quibus in Synodo Londinensi, Anno Dom.* 1552 *ad tollendam opinionum dissensionem, et consensum verae religionis firmandum, inter Episcopos et alios eruditos viros convenerat. Regia authoritate in lucem editi.* Upon the question whether the articles only rest on the king's authority or are to be regarded as a confirmation of a resolution of convocation, see Cardwell, *l.c.* note.

[8] Perry, *Hist. of Eng. Ch.* II, 155 c 9 § 24. For fuller information as to the preliminaries to the issue of the forty-two articles see Perry II, 207, 214 c 12 §§ 7, 20.

[9] Printed in Cardwell, *Docum. Annals* I, 231 under the title: *A declaration of certain principal articles of religion set out by the order of both archbishops metropolitans, and the rest of the bishops for the uniformity of doctrine, to be taught and holden of all parsons, vicars and curates, as well in testification of their common consent in the said doctrine to the stopping of the mouths of them, that go about to slander the ministers of the church for diversity of judgment, as necessary for the instruction of their people; to be read by the said parsons, vicars, and curates at their possession-taking, or first entry into their cures, and also after that, yearly at two several times, that is*

bishop Parker and other bishops and published by them to be used by the clergy subordinate to them. In these articles the principles of the English church as to various matters of constitution and doctrine are clearly defined, chiefly in opposition to Romish views.

5. The thirty-nine articles (1563). They rest even in minor details on the forty-two articles.[10] They were originally published by the queen in the form of a ratification of resolutions of convocation;[11] but the text as issued contained two deviations from that which convocation had sanctioned, so that in reality the articles probably had binding force only as a royal ordinance. Contrary to the wish of the queen, whose aim was to avoid as far as possible a final, legislative determination of doctrine, the house of commons in 1566, the whole parliament in 1571, adopted a bill making subscription of the thirty-nine articles of 1563 an essential condition before priest's or deacon's orders were granted or a benefice with cure of souls transferred. The queen yielded, and the bill became the *Subscription Act* (13 *Eliz.* [1571] c 12).[12]

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to say, the Sunday next following Easter day, and St. Michael the archangel, or on some other Sunday within one month after those feasts, immediately after the gospel.

[10] A comparison of the forty-two articles with the thirty-nine will be found in Perry, *l.c.* p. 220 c 12, notes and illustrations (c).

[11] Printed in Cardwell, *Synodalia* I, 34, from the original edition, under the heading: *Articuli de quibus in synodo Londinensi anno Domini iuxta ecclesiae Anglicanae computationem* 1562 *ad tollendam opinionum dissensionem, et firmandum in vera Religione consensum, inter Archiepiscopos Episcoposque utriusque Provinciae, nec non etiam universum Clerum convenit. Regia authoritate in lucem editi.* The same document (with trifling variations) is also printed in Wilkins, *Concilia* IV, 233, where the signatures are given. Among these signatures are those of members of the upper and lower house of the Canterbury convocation, also of three bishops of the province of York (York, Durham, Chester), but not of members of the lower house of York. Nor is anything known of any resolution of the northern convocation touching the draft of these articles. (Cf., however, Joyce, *Synods* p. 560. Trevor, *Convocations* p. 89. The report of a discussion possibly referring to these articles is printed in Trevor, *l.c.* p. 96 and in Wilkins, *Conc.* IV, 243.) With this view the last sentence of the articles, which is contradictory to the heading, agrees: *Hos articulos . . . Archiepiscopi et Episcopi utriusque Provinciae regni Angliae in Sacra Provinciali Synodo legitime congregati unanimi assensu recipiunt et profitentur, . . . : universusque clerus Inferioris domus eosdem etiam unanimiter et recepit et professus est . . .*

[12] *An Acte to refourme certayne Dysorders touching Ministers of the Churche.*

s 1. Every person under the degree of a bishop who shall pretend to be priest or minister by reason of any form of institution, consecration or ordering other than that set forth in the time of Edward VI and Elizabeth shall *declare his Assent and subscribe to all the Artycles of Religion which onely concerne the Confession of the true Christian Faithe and the Doctrine of the Sacramentes, comprised in a Booke imprinted entituled, Articles whereupon it was agreed by the Archbisshops and Bishops of both Provinces, and the whole Cleargie in the Convocation holden at London in the yere of our Lorde God a thousande five hundred sixtie and two, according to the Computation of the Church of Englande, for the avoydyng of the diversities of Opinions and for the establishing of Consent touching true Religion; put foorth by the Queenes auctho-ritie; . . .*

s 3: *And that no person shall hereafter be admytted to any Benefice with Cure, except he . . . shall fyrst have subscribed the sayde Articles . . .*

From the journals of parliament it is plain that by the 'Articles of Religion' which were to be subscribed in accordance with this act was meant 'a little book printed in the year 1562' [1563].[13] The 'little book' was a non-official English translation of the Latin thirty-nine articles of 1563 and contained only one of the two deviations of the published articles from those adopted by convocation.[14] For the better execution of the law at the southern convocation of 1571 the wording (Latin and English) of the articles was fixed, and the Latin text of 1571 was that to which subscription was afterwards enforced.[15] This text agrees—some inconsiderable verbal alterations excepted—with the convocation copy of 1563; but not with the ratified and published articles of 1563 or with the 'little book.'[16] After the death of Elizabeth the articles were again approved by a resolution of the southern convocation of 1604.[17]

The act 14 *Car. II* (1662) c 4, *Act of Uniformity*, ss 13, 15 laid down, that certain officers of the universities and lecturers should also be bound to subscribe to the thirty-nine articles.

These thirty-nine articles formed a substitute for all confessions of faith previously in vogue in the English church. In them the three ancient creeds are recognized as binding.[18] How far or

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s 4: . . . ; *nor shalbe admitted to thorder of Deacon or Ministerie* (=priesthood), *unles he shall fyrst subscribe to the saide Artycles.*

With regard to the words in s 1 *which onely*, it was for some time disputed whether subscription was only required to those articles which relate to the doctrines of the church or to all. See more in Cardwell, *Synodalia* I, 60, note.

[13] For the statements of the parliamentary journals as to the debate on the bill see Cardwell, *Syn.* I, 56, after Lamb, *Articles*.

[14] Cardwell, *Synodalia* I, 53.

[15] Perry, *Hist. of Engl. Ch.* II, 301 c 17, notes and illustrations (B). The Latin text of 1571 is printed in appendix XI from Cardwell, *Synodalia* I, 73.—Whether the northern convocation in 1571 passed a final resolution is not known. Wilkins, *Conc.* IV, 270.

[16] See Cardwell, *Synodalia* I, 38 ff., note; 54, note; 76, note (after Lamb, *Articles*). The Latin text of 1571 does not contain the clause of the 20th article added by the queen to the resolutions of the convocation of 1563: *Habet ecclesia ritus statuendi jus et in fidei controversiis auctoritatem*; but it does contain the present 29th article, which the queen had struck out of the resolutions of convocation: *De manducatione corporis Christi et impios illud non manducare.* In the 'little book' both passages are wanting (it contains only 38 articles); thus the Latin text of 1571 differs from the 'little book' in regard to the second point. (The English text of 1571 contains the addition in article 20 and also article 29.)

[17] *Acta Convoc. Cantuar.* (printed in Cardwell, *Syn.* II, 583 and Wilkins, *Conc.* IV, 379): *Decimo octavo die mensis Maii dominus rex articulos religionis anno* 1562 *promulgatos synodo mittit de novo approbandos et subscribendos: quod etiam factum est.* It is not known that there was also a confirmation of the articles at this time by the provincial synod of York.—This approval is distinct from the reference to the thirty-nine articles in canon 5 of 1604 (appendix XII).

[18] Article 8 of the thirty-nine articles (appendix XI).

The two houses of the convocation of Canterbury passed on May 9th, 1873, the following resolution (*Chron. of Conv. Cant.* 1873, pp. 405, 435):—

For the removal of doubts, and to prevent disquietude in the use of the Creed

whether the articles are to be supplemented from the prayer-book is a moot point.[19] No other formularies of belief have since obtained binding force; thus the so-called 'Lambeth Articles' of 1595 remained a private expression of judgment.[20] [21]

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commonly called the Creed of St. Athanasius, this Synod doth solemnly declare:

1. *That the Confession of our Christian Faith, commonly called the Creed of St. Athanasius, doth not make any addition to the faith as contained in Holy Scripture, but warneth against errors which from time to time have arisen in the Church of Christ.*
2. *That as Holy Scripture in divers places doth promise life to them that believe and declare the condemnation of them that believe not, so doth the Church in this confession declare the necessity for all who would be in a state of salvation of holding fast the Catholic faith, and the great peril of rejecting the same. Wherefore the warnings in this confession of faith are to be understood no otherwise than the like warnings in Holy Scripture, for we must receive God's threatenings even as His promises, in such wise as they are generally set forth in Holy Writ. Moreover, the Church doth not herein pronounce judgment on any particular person or persons, God alone being the Judge of all.*

[19] Compare, for instance, the judgment of the judicial committee of the privy council in the case of Gorham *v.* bishop of Exeter (1850).

[20] Printed in Cardwell, *Docum. Annals* II, 30. They confirm the doctrine of predestination. The matter of them was incorporated in the Irish articles of 1615.

[21] During the first revolution the thirty-nine articles were thrust aside by parliament's acceptance in 1643 of the covenant. The Westminster assembly, summoned by parliament, had already debated alterations of them, and on 11th Dec. 1646 laid before parliament the draft of a new confession of faith. Perry, *Hist. of Engl. Ch.* II, 454 c 29 § 6. A resolution of the English parliament (20th June, 1648) expressed agreement with the doctrinal part of the Westminster confession. Neal, *Hist. of Puritans* Ed. 1822 III, 318 ff. After the restoration all these measures were considered null and void as lacking the king's assent.

In Scotland the general assembly had by resolution of 27th Aug. 1647 adopted the whole of the Westminster confession (*Acts of Gen. Assembly* p. 158). That confession (printed in Neal, *Hist. of Puritans* Ed. 1822 V, pp. lxiii ff. appendix No. 8 and *Acta Parl. Scotland* IX, 117) was by act of 1690 No. 7 (*Acta Parl. Scot.* IX, 133) ratified and established as the public and avowed confession of the Scottish church. In 1879 the general assembly accepted a modified statement of the doctrine of predestination.

III. Relation of the Church of England to other Christian Churches.

§ 17.

1. THE RELATION OF THE REFORMED CHURCH OF ENGLAND TO THE CHURCH IN ENGLAND BEFORE THE REFORMATION.

In English writers we are not seldom encountered by the contention that the development of the reformation period was in uninterrupted connexion with the past. For the most part such statements merely imply that the transition from old to new was effected in valid form. But frequently they are to be regarded as assertions that a material difference in character between the English church before and after the reformation does not exist.

In neither of the two senses can the contention in this general form be recognized as true: on the contrary, it needs considerable limitations:—

1. As regards the form in which the change was made.

According to constitutional law as it prevailed before the reformation the state was not entitled to issue ordinances upon purely ecclesiastical matters; the exclusive right of the church to make such ordinances was not contested even by the civil powers.[1] Nothing was in dispute between church and state before the reformation save, as it were, certain frontier-lands, and it was only as to these frontier-lands that the state made good a right to legislate independently of the church and indeed in conflict with it. The recognition by the state of the exclusive right of the church authorities to make laws in purely church matters rested, it is true, originally and principally on the ordinance of William I, that is, on an act of the secular power only. But we shall not be far astray if we assume that, in the centuries which ensued down to the reformation, that ordinance was regarded even by the civil powers not as

[1] Compare § 28, note 1.

a special concession revocable by the will of the sovereign, but as the confirmation of a right inherent in the church without any such ordinance and not dependent on the consent of the state.

Within the same limits as the independence of the ecclesiastical authorities in England, the power of the pope to govern and make rules had been recognized for centuries by decisive acts of the state, *e.g.* by the conclusion of agreements as to the exercise of such powers. England had, indeed, at latest with the declaration of independence of 1366,[2] shaken off the yoke of the universal *temporal* monarchy which it was the aim of the popes to establish; with respect to *spiritual* affairs she had, however, still remained subject to the universal domination of Rome.

Now, seeing that at the beginning of the reformation England by resolution of her national representatives renounced for the future all acknowledgment of the papal authority, this step must be accounted revolutionary and indicative of a distinct breach with the past. A parallel case would be the declaration by a federal state that it would no longer obey the ordinances of the central power in matters as to which such ordinances had hitherto been valid.

Side by side with this legal breach (*Rechtsbruch*) in respect of a material point in the constitution as hitherto recognized is to be placed a whole series of smaller breaches of contract. Thus, for example, 24 *Hen. VIII* c 12 (restricting appeals to Rome) is in violation of the treaty of Avranches in 1172; similarly the abolition of Peter pence involved a breach of repeated and express engagements made by English kings to the popes.

But besides the breach with the central power at Rome, the reformation produced a change in the relations of the state to the local authorities of the church. It is true that this change was effected in part with the acquiescence of the latter; but in part it resulted from the isolated action of the civil authorities without the co-operation of the authorities of the church, who hitherto had enjoyed independence in the matters concerned. During the days of Henry VIII and Edward VI the government was extremely cautious in this direction; only in minor details did it ignore the absence of assent by the convocations or at least the convocation of Canterbury. But after the reaction under Mary, the revival in Elizabeth's reign of the most important reforming laws, and especially the introduction once more of the royal supremacy and of the reformed prayer-book, took place by the sole act of the civil powers, convocation being either not consulted or expressedly hostile to the measures adopted.

If then we admit that the reformation was accompanied in England as elsewhere by a disturbance of existing legal relations, yet ecclesiastical law as concerned with the English church of to-day by no means loses as a consequence its sure foundation. Ecclesiastical law serves the purpose of mediating between two powers, the

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[2] Compare § 4, note 117.

state and the church, each of which claims independence of the other. It must therefore, as in similar case international law, act upon the principle that a condition of affairs maintained by force, *if it continues*, becomes legal. In England the statutes upon which the reformation rests remained permanently operative. They must, therefore, be treated as fundamental in any estimate of English ecclesiastical law at the present day, whether their origin was in true legal form or not.

For the rest, the *Rechtsbruch* once made was rendered as imperceptible as possible by the power responsible for it: civil enactment permitted the execution of all ecclesiastical ordinances hitherto customary, in so far as they did not offend against the prerogatives of the crown or the laws and customs of the land.[3] This provision concealed a rupture, which nevertheless remained: for the 'prerogatives of the crown' and the 'laws and customs of the land' bore a totally different meaning after the reformation from that which they had before it, and the change in meaning had itself been brought about by a *Rechtsbruch*.

2. As regards the matter changed.

The constitution of the church was only changed at the reformation in England so far as seemed absolutely necessary to the attainment of the ends which the reformation proposed. Accordingly, the ecclesiastical offices in the country—except as affected by the dissolution of the monasteries—remained nearly unaltered. The real changes which ensued relate almost exclusively to the connexion of the national church with the pope; they consist in the complete abolition of all papal authority in England, and in the transference of almost all rights of government previously exercised by the pope to the English sovereign.

But herein was involved an alteration of the constitution of the church in the very point which must be regarded as decisive. The peculiarity of the Romish church as that church had developed with the progress of time, lay not so much in the distinctive character of its offices and the determination of the rights and duties attached thereto, as in the existence of a central power outside the various nations, a power which claimed to stand above them and persistently sought to weaken all civil powers which did not yield to its ever-growing pretensions. Now, the reformation in eradicating this element of disunion and declaring all ecclesiastical interference from without to be inadmissible, must be regarded as having produced a *fundamental change* in the constitution of the church.

If then from the standpoint of legal history the doctrine of continuous development must be rejected, adherence to that doctrine was at the time deemed desirable as a matter of policy. Indeed, it was invented then to avoid as far as possible the appearance of innovation and to draw all imperceptibly into the new

[3] Compare § 14, note 17.

camp. Hence also the preambles to many of the statutes of the reformation, representing the new provisions as long the law of the land, of which they are mere explanations; and hence the parentheses to the same effect scattered about the enacting parts of the statutes in question. The doctrine having served its purpose in the struggle with the followers of the old faith, was utilized in the conflict with the presbyterians. As against them it was employed to strengthen the position of episcopacy, which was represented as the legal form of government taken over from prereformation times and rendered venerable by antiquity.

Even at the present day this untenable doctrine of continuous development, although political reasons for maintaining it have long ceased to have weight, meets with the most general acceptance. It is thus frequently assumed that the present established church is identical with the prereformation church of England; and hence springs the vague idea that the church of England of to-day is more nearly akin to the present Roman catholic church than to any other. This view further influences, not perhaps of legal necessity but as a matter of fact, the form which relations take to the Roman catholic and to other Christian churches of our time. Such inferences can no more be justified than the primary consideration whence they are deduced.

§ 18.

2. THE RELATION OF THE REFORMED CHURCH OF ENGLAND TO OTHER CHRISTIAN CHURCHES OF MODERN TIMES.

The legal basis of the relations of the church of England to other Christian churches is article 34 of 1563.[1] Therein is acknowledged the right of every particular or national church to change its own traditions and ceremonies so long as nothing is ordained against 'God's word,' that is, the Bible. Subject to the condition specified, the church of England recognizes the equality of other churches existing side by side with itself.

But a difficulty arose in reconciling this recognition of *several* churches, standing side by side with equal rights, to the language of the three ancient creeds adopted[2] by the church of England, in that these creeds speak of *one*[3] catholic church and faith. To

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[1] Printed in appendix XI. Cf. also art. 19: *Ecclesia Christi visibilis est coetus fidelium, in quo verbum Dei purum praedicatur, et sacramenta, quoad ea que necessario exigantur, iuxta Christi institutum recte administrantur* . . .

[2] See article 8 of 1563 (appendix XI).

[3] Apostles' creed in old form: *Credo in* . . . *Sanctam Ecclesiam* . . . ; in the full form: *Credo in* . . . *Sanctam Ecclesiam Catholicam Sanctorum*

reconcile the apparent discrepancy the church of England has conceived the existence of a larger 'catholic' church consisting of all the Christian churches recognized as having rights equal to its own. The church of England calls itself also 'catholic'[4] to characterize itself as a member of that larger community. Thus the word catholic used with reference to the church of England does not imply an exclusive claim to the quality of catholicity, as, for example, it does in the doctrine of the Roman catholic church. Nor does the church of England in calling itself catholic aim—as is frequently assumed—at indicating a particularly close relationship to other churches which give themselves the same title. Lastly, it follows from what we have said that, as far as the ecclesiastical law of the church of England is concerned, the designation 'catholic' forms no antithesis whatever to the designation 'protestant.'[5] A church which—as, for instance, that of England in the thirty-nine articles, art. 19 etc.—protests against the ceremonies and doctrines

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communionem . . . —Nicene Creed: *Credo* . . . *Et unam Sanctam Catholicam et Apostolicam Ecclesiam* . . . —Athanasius' creed: *Quicunque vult salvus esse, ante omnia opus habet, ut teneat Catholicam fidem; . . . Fides autem Catholica haec est* . . . *Haec est fides Catholica, quam nisi quisque fideliter firmiterque crediderit, salvus esse non poterit.*

[4] The prelates of the English church and its offshoots, gathered in the pan-anglican conferences, entitled themselves in 1867, *Bishops of Christ's Holy Catholic Church in visible communion with the united Church of England and Ireland*, in 1878, *Archbishops, bishops metropolitan, and other bishops of the Holy Catholic Church in full communion with the Church of England.*

[5] According to Phillimore, *Eccles. Law* 3 ff. the term 'protestant' has not been adopted by the church in any of its formularies. [Nor has it any the more, until quite modern times, designated itself 'catholic' in the newer sense by which the term is limited to episcopal churches. The established church of England is implied to be protestant even in the final form of address agreed by the convocation of Canterbury in 1689. For details as to the framing of this address see Perry, *Hist. of Eng. Ch.* II, 547 c 36 § 21.] The offshoot churches have, for the most part, expressly named themselves reformed episcopal churches or protestant episcopal churches. [The general convention of the church of Ireland in 1870 designated that church in one and the same declaration (printed in the *Church Year-Book*, 1883 p. 452) 'Catholic and Apostolic' and 'reformed and Protestant.'] In the statutes the established church and its doctrine are chiefly spoken of as protestant.

Strictly speaking, it cannot be doubted (in spite of the opposite contention in Phillimore, *l.c.* 6) that when the English church is called protestant a general agreement, if not an agreement in detail, of position and doctrine with the protestant churches of the continent and Scotland, in opposition to the church of Rome, is indicated. Thus, for example, according to 1 *Gul. III & Mar.* (1688) sess. 2 c 2, *Bill of Rights*, s 1 (art. IX), and 12 & 13 *Gul. III* (1700/1) c 2 s 1, to succeed are the 'Heirs . . . being Protestants,' no distinction being drawn between possible protestant churches to which they might belong; according, however, to 12 & 13 *Gul. III* c 2 s 3, *whosoever shall hereafter come to the Possession of this Crown* (that is: *after* having gained possession), *shall joyn in Communion with the Church of England as by Law established.* Compare further *e.g.* the text of the treaty of Berwick in 1586 (printed in § 10, note 26). There the English religion is implied to be in agreement with the religion of Scotland and with the religion of other princes (the protestant princes of the continent are meant). This common religion is designated 'catholic.' (In Scotland, it is true, a constitution with 'bishops' had then been adopted, but the 'bishops' had not been consecrated by laying on of hands.)

of other catholic churches, may nevertheless be 'catholic' in the sense set forth above.

Though the church of England, according to article 34 of 1563, admits the possibility of the existence of churches with equal rights, nevertheless the condition attached, 'so that nothing be ordained against God's word,' leaves room for dispute as to what churches fulfil the condition.

The high church party, at present again in the ascendant in the English established church, lays special weight on the possession by the foreign church of the office of bishop. Accordingly, it recognizes the equality only of such Christian churches as have an episcopal constitution and can point to due transmission from the earliest times (in theory, from the days of the apostles) of the episcopal office by the imposition of hands.

By this distinction a certain outward form of the church is pronounced essential, whilst what is of main import, its doctrine, is left unregarded. Moreover, the distinction is based, not on the form of the constitution as a whole, but on a single constituent of that form, to the ignoring of other equally important parts.[6] Lastly, though the episcopal is the recognized constitution of the church of England, it cannot even be conceded that that constitution is regarded in the fundamental formularies of the English church as the essential one of every Christian church.

It is true that in the introduction to the form of ordination attached to the prayer-book[7] the proposition—not historically sound, at least without limitation[8]—is laid down that from the time of the apostles there have been three orders of ministers in Christ's church, viz. bishops, priests and deacons; it is not, however, contended there that the *Bible* prescribes an episcopal constitution. Nor does the profession of belief known as the thirty-nine articles contain the doctrine of the divine institution of episcopacy. Article 36 does not go beyond the statement that the prayer-book form of ordination contains all things necessary for consecration or ordination and has in it nothing which in itself is superstitious or impious; the question whether it contains anything which is not indeed impious or superstitious but is superfluous or non-essential, is left open. In article 23 *de vocatione ministrorum* it is not maintained that a bishop only can ordain; on the contrary, a phrase is used—obviously by design—applicable also to a non-episcopal constitution, that the call is to be by 'those persons to whom has been publicly committed

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[6] For example, no heed is paid to the fact that, regarded as a whole, the constitution of the church becomes essentially different when above the bishops there is a higher ecclesiastical power such as the papacy. The bestowing of episcopal orders furthermore obtains a totally different signification when it is the perfectly voluntary act of ecclesiastical authority from that which it has when the bestowal—as in the regular cases in England (25 *Hen. VIII* c 20 s 6)—can be compelled by the civil powers under the heaviest penalties.

[7] Printed in § 20, note 2.

[8] For details warranting this statement see Edgar Loening, *Die Gemeindeverfassung des Urchristentums*, Halle, 1888.

in the church the power of calling ministers and sending them into the vineyard of the Lord.'[9]

In point of fact the church of England at the present day is in a relation of full *mutual* recognition only with the churches of which she has been the mother. Furthermore, only those episcopal churches are practically treated as equals by the *English* church in which an uninterrupted descent of episcopal orders by imposition of hands is regarded as demonstrable,[10] in particular,[11] the Roman catholic,[12] the Greek catholic and the old catholic. The official acts

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[9] The exact words are: . . . *Atque illos legitime vocatos et missos existimare debemus, qui per homines, quibus potestas vocandi ministros, atque mittendi in vineam Domini, publice concessa est in ecclesia, coaptati fuerint, et asciti in hoc opus.* Canon 7 of 1604 (appendix XII) rejects only the contention that episcopacy is in opposition to Scripture; it is not maintained that it is ordered in the Bible as the sole permissible constitution. Canon 55 of 1604 prescribes the prayer: *Precamini pro Christi sancta ecclesia catholica, id est, pro universo coetu christiani populi per orbem terrarum diffusi* (*i.e. without* limitation to the churches with episcopal constitution).—In the canons of 1640 only in an indirect manner and by the addition of a phrase of double meaning (applicable equally to human and divine law) was the attempt made to obtain acknowledgment of a divine institution of episcopacy. The oath imposed by c 6 runs as follows:—

I A. B. do swear that I do approve the doctrine, and discipline, or government established in the church of England, as containing all things necessary to salvation; and that I will not endeavour by myself or any other, directly or indirectly to bring in any popish doctrine, contrary to that which is so established; nor will I ever give my consent to alter the government of this church by archbishops, bishops, deans, and archdeacons, etc. as it stands now established, and as by right (the high church party understood *by* [divine] *right*) *it ought to stand* . . . The validity of these canons is, however, doubtful, and as early as 1640 a royal ordinance directed that the taking of the oath should not be enforced (compare § 7, notes 32 and 33).

[10] For instance, the bishops of some methodist sects are not recognized. Compare § 13, note 10.

The bishops of 'The Reformed Episcopal Church in England' (a sect originated in opposition to 'ritualistic excesses in the established church') are not recognized. *Chronicle of Convocation of Canterbury*, 1878 pp. 170, 175–83.

As to the recognition of the bishops of the Moravian brothers no final decision has yet been reached. Cf. report of committee of third pananglican conference (1888) in Schmidt, *Konferenz der Bischöfe etc.* 1888, Augsburg, 1889 pp. 22, 65.

[11] On the relations of the church of England to the Spanish and Portuguese reformed episcopal church and to similar small groups in France and Italy compare the resolution of the second pananglican conference, 1878, printed in Perry, *Hist. of Eng. Church* III, 507 c 30 § 12, and the resolution of the third pananglican conference, 1888, in Schmidt, *l.c.* pp. 14, 64. In 1894 the archbishop of Dublin consecrated a bishop for reformed communities in Spain.

On the relations of the church of England to the Swedish episcopal church and to the churches (not conferring episcopal consecration) in Norway and Denmark compare the resolution of the third pananglican conference, 1888, in Schmidt, *l c.* pp. 14, 21, 60.

[12] According to articles 22, 24, 28 the doctrines of purgatory and of transubstantiation and the use of a 'tongue not understanded of the people' are contrary to Scripture. So also according to the corresponding resolutions of both houses of the convocation of Canterbury, 15th Feb. and 16th June, 1871 (printed in § 14, note 14) is the doctrine of papal infallibility. Thus if we consider the terms of articles 34 and 19, it would appear not allowable from the standpoint of the English church to treat the Roman catholic church as having equal rights, though this is done in point of fact.

of bishops, priests and other officers of these churches, done within competence, are regarded by the English church as, in principle, valid.[13] Only in so far as the clergy of these foreign churches seek to hold preferment or office in the church of England, or in so far as these foreign churches encroach upon the territories of the English church, is a long series of reservations made.[14] With bishops of the Greek catholic and of the old catholic churches negotiations have taken place for full mutual recognition; they have, however, borne but little fruit.[15]

As to the churches which know no episcopal succession propagated by imposition of hands, particularly then, as to the protestant churches of the continent and of Scotland, the practice in regard to the recognition of their equality has varied from time to time. During the reign of Elizabeth and James I the clergy of non-episcopal churches outside England were, in the opinion of the day, accounted regularly ordained priests;[16] under Eliza-

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[13] Thus, for example, a new ordination is not required in the case of a Roman catholic priest passing over to the church of England. Cf. Phillimore, *Eccles. Law* 145, note (i), 2284 ff., and the legal provisions quoted below in note 19.—The Roman catholic church on its part does not recognize the validity of orders conferred in the church of England since the time of Edward VI, basing its objection especially on the *form* of ordination then introduced. Richter, *Kirchenrecht* § 109, note 5.

[14] Compare, in particular, at the present time 37 & 38 *Vict.* (1874) c 77 *Colonial Clergy Act;* also the preamble to 34 & 35 *Vict.* (1871) c 53: . . . *whereas no ecclesiastical title of honour or dignity derived from any see, province, diocese, or deanery recognised by law, or from any city, town, place, or territory within this realm, can be validly created, nor can any such see, province, diocese or deanery be validly created, nor can any pre-eminence or coercive power be conferred otherwise than under the authority and by the favour of Her Majesty, her heirs and successors, and according to the laws of this realm;* . . .

[15] Compare Bruno Bauer, *Einfluss des englischen Quäkertums auf die deutsche Kultur und auf das englisch-russische Project einer Weltkirche*, Berlin, 1878. Discussions of pananglican conferences, and reports of committees of the convocation of Canterbury 'on intercommunion' will be found in the *Chronicle of Convocation.* Relations with the old catholics of Holland, Germany and Austria (who in the last country have as yet had no bishop) and with the *Christkatholiken* of Switzerland are determined more particularly by the resolutions of the third pananglican conference (1888), in Schmidt, *Konferenz der Bischöfe etc.* 1888. Augsburg, 1889, pp. 14, 21, 22, 61 ff. 66 ff.

[16] In the treaty of Berwick, 1586 (printed § 10, note 26) the religion practised in Scotland and by the protestant princes of the continent is recognized without any reservation touching episcopacy.

Bacon, *Advertisements touching the Controversies of the Church of England* (written probably about 1589; printed in *The Works of F. B.*, ed. Spedding, Ellis and Heath VIII, 87) treats the denial of the validity of foreign non-episcopal ordinations as a novelty: . . . *Yea and some indiscreet persons have been bold in open preaching to use dishonourable and derogative speech and censure of the churches abroad; and that so far, as some of our men (as I have heard) ordained in foreign parts have been pronounced to be no lawful ministers.*

When in 1610 the Scottish bishops, who had not been consecrated by laying on of hands, received consecration from English bishops, archbishop Bancroft declared it unnecessary to ordain them first as deacons and priests, on the ground that in places where episcopal ordination was not to be had, ordination

beth,[17] and temporarily after the restoration of episcopacy under Charles II,[18] priests who had not been ordained by bishops were allowed to officiate even within the church of England. After that time, however, the view became prevalent that churches without episcopal constitution were not to be recognized as being on a footing of equality, a view which obtains at the present day. It has, as we have endeavoured to show above, no support in the fundamental laws of the church of England. Nor is it any the more approved to this general extent in later civil enactments. There is only one point which the act of uniformity of Charles II decides as it should be decided according to the doctrine that non-episcopal churches are not entitled to recognition: it forbids, *within the established church of England*, any person to be admitted to a benefice who has not received ordination from a bishop.[19] That is still the law of the land.

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by a presbyter was to be regarded as valid. Spotiswood, *Hist. of Church and State of Scotland* Ed. 1851, III, 208, 209. Compare, however, Heylin, *The History of the Presbyterians* 2nd Ed. 1672, p. 382, who states that Bancroft based his decision on the argument, that there was no necessity of receiving the order of priesthood, but that episcopal consecration might be given without it.—When, after the restoration under Charles II, the same question arose in connexion with the ordination of Scottish bishops, it was answered in an opposite sense.

Bramhall, archbishop of Armagh, newly ordaining after the re-establishment of the episcopal constitution (1660) presbyterian ministers of his bishopric, left the validity of non-episcopal ordination undetermined, inserting in the letters of orders (probably in every case; one case, at all events, is known) the clause: *Non annihilantes priores Ordines (si quos habuit) nec validitatem aut invaliditatem eorundem determinantes, multo minus omnes Ordines sacros Ecclesiarum Forinsecarum condemnantes, quos proprio Iudici relinquimus, sed solummodo supplentes, quicquid prius defuit per Canones Ecclesiae Anglicanae requisitum* . . . Vesey, *The Works of Bramhall*, Introduction (*Life of B.*), Edition 1677 [p. xlviii].

[17] According to 13 *Eliz.* (1571) c 12 s 1 every person under the degree of a bishop who claims '*to be a Priest & Minister of Godes holy Word and Sacraments, by reason of any other fourme of Institution Consecration or Orderyng* than the forms of Edward VI or Elizabeth, is to declare his assent to the thirty-nine articles. Upon this condition he is to remain in possession of his office and benefice. Nor is any other provision made by this act for new admissions to benefices.—For the fact that in Elizabeth's days clergy officiated in the church of England who had not been ordained by bishops, see Keble, *Hooker's Works*, Introduction, Edition 1888, vol. I p. lxxxiv.

[18] 12 *Car. II* (1660) c 17 enacts that, subject to the condition of taking the oath of allegiance and supremacy, every *ecclesiastical person, ordained by any Ecclesiastical persons* before Dec. 25th, 1659, shall be restored to the office and benefice from which he may have been expelled during the civil wars.

[19] 14 *Car. II* (1662) c 4.

s 9: . . . *from and after the Feast of St. Bartholomew 1662 no person who now is Incumbent and in possession of any Parsonage Vicarage or Benefice and who is not already in Holy Orders by Episcopall Ordination or shall not before the said Feast day of St. Bartholomew be ordained Preist or Deacon according to the forme of Episcopall Ordination shall have hold or enjoye the said Parsonage etc.* . . . (This involves a change in the act, cited in note 18, 12 *Car. II* [1660] c 17.)

s 10: . . . *no person* . . . *shall* . . . *be capable to bee admitted to any Parsonage Vicarage Benefice or other Ecclesiastical Promotion or Dignity nor shall presume to consecrate and administer the Holy Sacrament of the*

§ 19.

3. PROCEDURE AGAINST HERETICS.[a]

PROSECUTIONS for heresy were very rare in England until about the end of the fourteenth century.[1] A definite mode of proceeding

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Lords Supper before such time as he shall be ordained Preist according to the forme and manner in and by the said Booke (prayer-book) *prescribed unlesse he have formerly beene made Preist by Episcopall Ordination . . .*

s 11: *Provided that the penalties in this Act shall not extend to the Forreiners or Aliens of the Forrein Reformed Churches allowed or to be allowed by the Kings Majestie . . .*

In the introduction to the form of ordination appended to the prayer-book the words are, with express limitation to the church of England: . . . *no man shall be accounted or taken to be a lawful Bishop, Priest or Deacon in the Church of England, or suffered to execute any of the said Functions, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration or Ordination.*

Cf. also 37 & 38 *Vict.* (1874) c 77 *Colonial Clergy Act*, ss 3, 4.

[1] The following instances of prosecutions for heresy in England before 1377 are collected for the most part by Stubbs, *Hist. App.* p. 52 *l.c.* and *Const. Hist.* III, 365, note 1 c 19 § 494: —

1. The earliest recorded case (on the date see Stubbs, *Const. Hist.* I, 505, note 1 c 12 § 140) relates to a process at Oxford in 1166. William of Newburgh reports (*Rer. Brit. Scr.* No. 82) I, 133: . . . *comprehensi, tentique sunt in custodia publica. Rex . . . episcopale praecepit Oxoniae concilium congregari . . . Moniti, ut poenitentiam agerent, et corpori ecclesiae unirentur, omnem consilii salubritatem spreverunt . . . Tunc episcopi . . . eosdem publice pronuntiatos haereticos corporali disciplinae subdendos catholico principi tradiderunt. Qui praecepit haereticae infamiae characterem frontibus eorum inuri, et, spectante populo, virgis coërcitos urbe expelli, districte prohibens ne quis eos vel hospitio recipere, vel aliquo solatio confovere praesumeret.* Similar reports in Rad. de Diceto, *Ymagines Historiarum* (*Rer. Brit. Scr.*) III, 318; Rad. de Coggeshale, *Chron.* (*Rer. Brit. Scr.* No. 66) 122; Walter Map, *De Nugis Curialium* (written about 1180–90; ed. Wright) 62. — Cf. *Assisa Clarendon*, 1166 (Stubbs, *Select Charters* p. 143) c 21: *Prohibet etiam dominus rex, quod nullus in tota Anglia receptet in terra sua vel soca sua vel domo sub se, aliquem de secta illorum renegatorum qui excommunicati et signati fuerunt apud Oxeneforde. Et si quis eos receperit, ipse erit in misericordia domini regis; et domus, in qua illi fuerint, portetur extra villam et comburatur . . .*

[Cf. Hoveden (*Rer. Brit. Scr.* No. 51) II, 273, year 1182: . . . *erat tunc quando Publicani comburebantur in pluribus locis per regnum Franciae, quod rex nullo modo permisit in terra sua, licet ibi essent perplurimi.* According to Stubbs, preface to Hoveden vol. II p. liv, the remark probably applies only to the continental possessions of Henry II.]

2. In 1210 one of the Albigenses was burned in London. It is not known whether there were formal proceedings in this case. We may surmise that in consequence of the interdict no ecclesiastical judgment was pronounced. (Compare also John's order to his servants [20th Nov. 1214] touching the extirpation of heretics in Gascogny. Rymer, *Foedera* 4th Ed. I, 126.)

3. In 1222 a deacon who had apostatised to judaism was degraded, delivered up to the temporal power, and burned or hanged. Bracton, Bk. III tract. 2 c 9 § 2 (printed in note 2); Wykes, *Chron.* (*Rer. Brit. Scr.* No. 36) IV, 63: *primo*

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[a] Hale, Matthew. *Historia Placitorum Coronae.* 2 vols. London, 1736 (new edition by Dogherty, London, 1800) I c 30.—Stubbs. *Constit. Hist.* III, 365 ff. c 19 § 404.—Stubbs. *Historical Appendix* II p. 54 to *Report of Ecclesiastical Courts Commission*, 1883 (*Parliamentary Reports*, vol. XXIV).

had apparently not yet been established. Councils of the church and prelates had recourse to imprisonment, degradation and delivery to the temporal arm. The kings carried out in some cases the sentences of the ecclesiastical courts; in others they proceeded against heresy independently. During the second half of the thirteenth century the discovery of heretics was one of the tasks of the sheriff in the *turnus vicecomitis*. The legal writers of this time regard heresy as an offence against the law of the land, and name as the punishment of it, as of some other offences, death by burning.[2]

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degradatur, saeculari judicio condemnatus, igne combustus est; Matth. Paris, *Chron. Maj.* (*Rer. Brit. Scr.* No. 57) III, 71: *quem Falco statim arreptum suspendi fecit.*

4. 1236. Instruction of Henry III to the sheriff of Yorkshire to apprehend and imprison until further orders from the king a heretic whose incarceration had been ordered by the prior of the Dominicans without authority; also, others suspected of heresy. Nothing is known of further procedure. Prynne, *Records* II, 475 (after *Claus.* 20 *Hen. III m.* 11 *dorso*). Hale, *l.c.* Ed. 1800. I, 394 (also after *Claus.* 20 *Hen. III m.* 11 *dorso*) mentions, that the goods of Ernald de Peregard, convicted of heresy, were confiscated for the use of the king.

5. 1240. A Carthusian at Cambridge was apprehended and sent before the legate for speaking disrespectfully of the pope. No further proceedings are reported. Matth. Paris, *Chron. Maj.* (*Rer. Brit. Scr.* No. 57) IV, 32.

6. 1241–2. The goods of Stephanus Peliter, convicted of heresy, were confiscated for the use of the king. Hale, *l.c.* I, 394 after *Claus.* 26 *Hen. III m.* 15.

7. By letter of 18th April [1284] (*Regist. Epist. Peckham; Rer. Brit. Scr.* No. 77; II, 705) Peckham begs king Edward I not to order the release of the heretics, kept prisoners in London by the king's instructions, before ecclesiastical examination.

8. 1286–88. A certain Richard Clapwell was excommunicated by archbishop Peckham for heretical doctrines. He proceeded to Rome; was there bidden to hold his peace; afterwards he died insane. *Annales de Dunstaplia* (*Rer. Brit. Scr.* No. 36) III, 323, 341. Upon this case see also preface p. xxxv to vol. III *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77).

9. 1311 and 1312. The charges against the templars were investigated by provincial councils. The examination of the accused and further judicial proceedings took place before special inquisitors under papal instructions. Cf. H. Ch. Lea, *A History of the Inquisition of the Middle Ages*, New York, 1888, III, 298.

(In Ireland heretics were first burned in 1324 and 1327. See Stokes, *Ireland and the Anglo-Norman Church* 375, note 1.)

10. In 1330 during the persecution of the franciscans some of them were, if we may trust the *Chron. Monasterii de Melsa* (*Rer. Brit. Scr.* No. 43) II, 323, burned *in Anglia in quadam sylva.* Stubbs, *Const. Hist.* II, 492, note 3 c 16 § 265, however, regards the fact as not sufficiently attested by this evidence. Compare also the royal warrant of arrest, dated 3rd Oct. 1333, in Rymer, *Foedera* 4th Ed. II, 870.

11. In 1336 a former franciscan, Ranulf, was brought as a heretic before the bishop of London and by him imprisoned at Stortford, *donec deliberaret de eo quid foret faciendum.* Ranulf died in prison not long afterwards. *Annales Paulini* (*Rer. Brit. Scr.* No. 76) I, 365.

[2] Glanvilla (about 1180–90) does not know the punishment of burning for any offence—in particular, not for incendiarism. Book XIV c 4.

Bracton, *De Legibus etc.*, lib. III tract. 2 c 9 § 2 (about 1230–57; *Rer. Brit. Scr.* No. 70, II, 300): . . . (*Clericus, si*) . . . *convictus fuerit de apostasia, . . . primo degradetur, et postea per manum laicalem comburatur, secundum quod accidit in concilio Oxoniensi, celebrato a bonae memoriae S. Cantuariensi archiepiscopo, de quodam diacono qui se apostatavit pro qua-*

Instances of prosecution multiplied rapidly after the rise of Wycliffe (that is, after about 1363) and the lollards, the sect whose tenets were based on his. At first in isolated cases the bishop who initiated process was allowed by royal writ to keep the condemned heretics in prison.[3] State legislation applicable to all cases began with 5 *Ric. II* st. 2 (1382) c 5.[4] Under this act the prelates might certify the chancellor of persons who preach heretical doctrines, or of the abettors of such persons; the chancellor was to give commissions to the sheriffs and other ministers of the king to arrest and keep in prison the offenders till they justified themselves 'according to the law and reason of holy church.'[5] Moreover,

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dam Judea, qui cum esset per episcopum degradatus, statim fuit igni traditus per manum laicalem.

Fleta (about 1290) lib. I c 29 *De Abjurationibus.* § 7: *Committentes autem Sacrilegium per Ecclesiam tueri non debent, sed per Clerum judicandi et degradandi: et hoc idem dicitur de Clericis Apostatis, quibus convictis, per Clerum statim degradentur, deindeque per Manum comburentur Clericalem (?Laicalem);* lib. I c 35 § 2: *Christiani autem Apostatae, Sortilegi et hujusmodi detractari debent et comburi.*

Britton (about 1291–2) lib. I c 10 *De Arsouns: Ausi soit enquis de ceux qe felounousement en tens de pes eynt autri blez ou autri mesouns arses; et ceux qi de ceo serount atteyntz soint ars, issint qe eux soint puniz par meymes tele chose dunt il peccherent. Et meymes tiel jugement eynt sorciers et sorceresces, et renyez, et sodomites, et mescreauntz apertement atteyntz.* (According to the note on the passage in MS. *N* [printed in Nichols's edition, I, 42, note Z] the 'inquirers of Holy Church' are to conduct the examination of sorcerers, sodomites, renegates and misbelievers and deliver the guilty to the king's court to be put to death; nevertheless, if the king by inquest find any guilty of such sins, he may put them to death *come bon Mareschal de la Chrestieneté.* These notes were probably written between 1295 and 1316. Nichols, *l.c.* Introduction, p. lxi.) In lib. I c 30 § 3 we read that at the *turnus vicecomitis* inquiry is to be made among other things *de renyez et mescreauntz.*

Mirrour aux Justices (end of 13th or beginning of 14th cent.) c 4 s 14: *Le judgement de Heresy est quadruple, le un est excommengement, le autre degradation, le tierce disherison, et le quart d'estre arse en cendres.* s 15: *Le judgement de arson se fornist per pendre a la mort, qui soloit fornir per arder; . . .*

[3] Cf. writ of Edward III of 20th March, 1370, to the bishop of London (in Rymer, *Foedera* 4th Ed. III, 889):—

Quia accepimus, per inquisitionem vestram, quod Nicholaus de Drayton . . . coram vobis congrue convictus et pro heretico adjudicatus existit;

Quodque, in suo errore nephando . . . nequiter perseverans, ad fidei catholicae unitatem redire non curavit nec curat in praesenti, licet saepius ad hoc excitatus et inductus, sententiam majoris excommunicationis in hac parte incurrendo, . . . ;

Cum igitur, sancta mater ecclesia ita tales hereticos prosequitur, ne suo veneno alios inficiant, ut in carceribus custodiri praecipiat;

Super quo nobis supplicastis, ut vobis dictum Nicholaum carcerali custodiae vestrae mancipare, et ipsum in carcere vestro custodire, quousque errorem suum hujusmodi nephandum revocaverit, et ad fidei catholicae unitatem redire voluerit, licentiam in hac parte specialem concedere dignemur;

Nos, . . . , quantum in nobis est, licentiam concedimus specialem.

[4] According to the bull of Urban VI, 30th March, 1382 (Rymer, *Foedera* 4th Ed. IV, 144), confederations, leagues and conventions with schismatics or heretics are not binding.

[5] The preamble to the act sets forth that the measure was adopted by all the estates. c 5 runs:—

. . . *Ordene est en cest parlement qe commissions du Roi soient directz as*

by royal letters patent of July 12th, 1382, the bishops were empowered to apprehend and detain all heretics until they recanted, or until the king and his council made other provision concerning them; the civil officers were instructed to execute the bishops' orders in respect of these arrests and detentions.[6] In the same year the commons preferred a request that 5 *Ric. II* st. 2 c 5 might be repealed as not having had the assent of the lower house. The king promised to grant their petition; nevertheless no entry that the enactment was repealed was made in the rolls.[7] In 1387 was issued, this time in understanding with the house of commons, a new order by the king to his officers, enjoining the incarceration of heretics and the confiscation of heretical books. In this order the co-operation of the ecclesiastical authorities is not contemplated. But the bishops received a separate instruction to take action in their several dioceses according to canon law.[8]

Viscontz et autres Ministres du Roi . . . apres et solonc les certificacions de prelatz ent affaires en la Chancellarie de temps en temps darester toutz tieux precheours et lours fautours maintenours et abettours et de les tenir en arest et forte prisone tantqe ils se veullent justifier selonc reson et la ley de Seinte Eglise: et le Roi voet et commande qe le Chanceller face tieles commissions a touz les foitz qil sera par les prelatz ou ascun de eux certifie et ent requis come dessuis est dit. According to Stubbs, *Const. Hist.* II, 487, note 2 c 16 § 265, the foregoing statute was passed in the session of 7th–22nd May.

[6] Wilkins, *Concilia* III, 156: . . . *Nos . . . praefato archiepiscopo* (of Canterbury), *eiusque suffraganeis, ad omnes et singulos, qui dictas conclusiones sic damnatas praedicare, seu manutenere vellent, clam vel palam, ubicunque inveniri possent, arrestandos, et prisonis suis propriis, seu aliorum pro eorum beneplacito committendos, in eisdem detinendos, quousque ab errorum et haeresium pravitatibus resipiscant, vel de hujusmodi arrestatis, per nos vel concilium nostrum aliter foret provisum, auctoritatem et licentiam, tenore praesentium, concedimus et committimus speciales. Mandantes insuper et injungentes universis et singulis ligeis ministris et subditis nostris . . . (ut) . . . archiepiscopo, eiusque suffraganeis, ac ministris suis in executione praesentium pareant, obediant humiliter, et intendant. . . .*

[7] In the session of 6th–24th Oct. 1382 the commons voted a petition that the enactment might be repealed (*Rot. Parl.* III, 141): . . . *Laquiel ne fuist unques assentu ne grante par les Communes, mes ce qe fuist parle de ce, fuist sanz assent de lour; Qe celui Estatut soit annienti, qar il n'estoit mie lour entent d'estre justifiez, ne obliger lour ne lour successours as Prelats pluis qe lours auncestres n'ont este en temps passez.* Answer: *Y plest au Roi.* Why no entry of the repeal appears in the rolls is not known. Stubbs, *Const. Hist.* II, 493, note 1, 630, c 16 § 265, c 17 § 293. In the statutes of the reformation period 5 *Ric. II* st. 2 c 5 is treated as valid; thus, for example, it is confirmed in 25 *Hen. VIII* (1533/4) c 14 s 2.

[8] Wilkins, *Concilia* III, 204. King's mandate of 30th March, 1387, to the sheriff of Nottingham and other officials: . . . *assignavimus vos . . . ad omnes et singulos libros . . . praedictos . . . investigandos, capiendos, et arrestandos . . . : ac ulterius ad proclamandum, ne quis . . . sub poena imprisonamenti et forisfactura omnium, quae nobis forisfacere poterit, aliquos hujusmodi libros . . . de caetero emere vel vendere, seu aliquas hujusmodi pravas et nefarias opiniones manutenere et docere praesumat quovismodo; et ad omnes illos, quos post proclamationem et inhibitionem praedictas inveniretis in contrarium facientes similiter arrestandos, et prisonis nostris mancipandos, in eisdem detinendos, quousque pro eorum deliberatione aliter duxerimus ordinandum. . . .*

Henr. de Knyghton, *Chronicle* (edited by Twysden. Cf. appendix XIV, II, 1 c No. 92) 2708: . . . *Rex vero sano consilio tocius parliamenti in hac parte*

More stringent measures were not taken until the following reigns. 2 *Hen. IV* (1400/1) c 15, promulgated upon petition both of the clergy and of the commons,[9] prescribed as the punishment for diffusing heretical doctrines confinement in the diocesan's prison 'as long as to his discretion should seem expedient'; for refusing to abjure or for relapse, death by burning. It allowed the arrest of the accused by and upon the initiative of the diocesan, and made the royal officers, when sentence had been passed, mere instruments in the execution of that sentence.[10] Shortly before the promulgation of this act the king in an isolated case gave orders for the burning of a person condemned by convocation for heresy (26th February, 1401).[11]

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utens, jussit archiepiscopo Cantuariensi caeterisque Episcopis Regni ut officium suum singuli in suis diocesibus secundum jura canonica acrius et ferventius exercerent, delinquentes castigarent, librosque eorum Anglicos plenius examinarent, errata exterminarent populumque in unitatem fidei orthodoxae reducere studerent, . . . Et jussit rex statim absque dilatione literas suas patentes in singulos comitatus regni velocius mitti, et in quolibet comitatu certos inquisitores de hujusmodi libris et eorum fautoribus instituit, praecipiens eis ut remedium celerius apponerent, rebelles proximo carceri manciparent donec rex eis mitteret. Sed executio tarda et quasi nulla affuit. . . .

[9] The petition of the commons had run (*Rot. Parl.* III, 473): *Item priount les Communes qe gant ascun Homme ou Femme, de quel estat ou condition q'il soit, soit pris et emprisone pur Lollerie, qe maintenant soit mesne en respons, et eit tiel juggement come il ad deservie, en ensample d'autres de tiel male secte, pur legerement cesser lour malveis Predications et lour tenir a Foy Christien.* Answer: *Le Roi le voet.*

[10] *. . . loci Diocesanus . . . ipsam personam . . . possit . . . facere arrestari et sub salva custodia in suis carceribus detineri, quousque . . . abjuraverit . . . Ita quod dictus Diocesanus per se vel Commissarios suos contra hujusmodi personas sic arestatas et sub salva custodia remanentes ad omnem juris effectum publice et judicialiter procedat, et negocium hujusmodi infra tres menses post dictam arestacionem, impedimento legitimo cessante, terminet juxta canonicas sancciones. Et si aliqua persona in aliquo casu superius expressato coram loci Diocesano seu Commissariis suis canonice fuerit convicta, tunc idem Diocesanus dictam personam sic convictam pro modo culpe et secundum qualitatem delicti possit in suis carceribus facere custodiri prout et quamdiu discrecioni sue videbitur expedire; ac ulterius eandem personam, preterquam in casibus quibus secundum canonicas sancciones relinqui debeat Curiae seculari, ad finem pecuniarium Domino Regi solvendum ponere, prout hujusmodi finis eidem Diocesano pro modo et qualitate delicti competens videatur; . . . Et si aliqua persona . . . coram loci Diocesano vel Commissariis suis convicta fuerit, et hujusmodi nephandas sectam predicaciones doctrinas opiniones scolas et informaciones debite abjurare recusaverit, aut per loci Diocesanum vel Commissarios suos post abjuracionem per eandem personam factam pronunciata fuerit relapsa, ita quod secundum canonicas sancciones relinqui debeat Curiae seculari, super quo credatur loci Diocesano seu Commissariis suis in hac parte, tunc Vicecomes illius loci, et Major et Vicecomites seu Vicecomes aut Major et Ballivi Civitatis Ville vel Burgi ejusdem Comitatus, dicto Diocesano seu dictis Commissariis magis propinqui, in Sentenciis per dictum Diocesanum aut Commissarios suos contra personas hujusmodi et ipsarum quamlibet proferendis, cum ad hoc per dictum Diocesanum aut Commissarios ejusdem fuerint requisiti, personaliter sint presentes; et personas illas et quamlibet earundem post hujusmodi sentencias prelatas recipiant, et easdem coram populo in eminenti loco comburi faciant, . . .*

[11] The order is printed in Rymer, *Foedera* 3rd Ed. III pt. IV, 197. On the

In the year 1406 a new enactment against the lollards was agreed by king and parliament. This was to have validity until the next parliament. Provision was made in it for the pronouncing of judgment by the king and the peers, without the co-operation of ecclesiastical courts. The enactment was not put on the rolls, for what reason is unknown.[12]

At the convocation of the southern province at London in 1409 elaborate measures were voted to prevent the spread of heretical doctrines, and more precise rules were given for the manner in which the prosecution of transgressors before the bishop's court was to ensue.[13]

A new and severe act, 2 *Hen. V* st. 1 (1414) c 7, was passed after the suppression of a lollard rising. By it to the earlier penalties against obdurate or relapsing heretics is added forfeiture of the property of the executed. Lands and tenements are to fall to the feudal lord; goods and chattels, to the king. The procedure is

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discussions which preceded cf. Stubbs, *Const. Hist.* III, 32 f. c 18 § 308.—According to Stubbs, *l.c.* III, 370 c 19 § 404—against Blackstone, *Comm.* IV, 46—this is the only known case of a writ *de haeretico comburendo* before 2 *Hen. IV* c 15. In that act the necessity of a royal order is not laid down, yet it seems, in point of fact, to have been obtained. (Cf., for instance, in the case of Badby the king's order, dated 5th March, 1410, in Rymer, *Foedera* 3rd Ed. IV pt. I p. 169.) 25 *Hen. VIII* c 14 (cf. below, note 20) expressly required the procuring of a writ *de haeretico comburendo*. From the time after the repeal of the latter act cf. *e.g.* the royal order of 1556 touching the burning of Cranmer, printed in Cardwell, *Doc. Ann.* I, 168; an order (1558) in Wilkins IV, 177; the orders of 1612 in regard to the burning of Legatt and Wightman in Somers, *Tracts* II, 400, 403.

[12] *Rotuli Parliamentorum* III, 583: *Item, mesme le jour, le dit Monsieur Johan* (the speaker of the commons) *myst avaunt en Parlement un Petition touchant les Lollardes, et autres parlours et controvours des Novelx et des Mensonges, et pria en noun des ditz Communes, qe mesme la Petition purroit estre enactez et enrollez en Rolle de Parlement, et tenuz pur Estatuit tan q'al proschein Parlement: Quel prier le Roy, de l'advys et assent des Seigneurs en Parlement, graciousement ottroia. De quel Petition le tenure s'ensuit en cestes parols: . . . Q'en cas q'ascun homme ou femme . . . preche, publie, ou mainteigne notoirement, ou tiegne, use, ou exercize ascuns Escoles d'ascun Secte ou Doctrine desore en avaunt encountre les suis ditz Foye Catholike, et sacramentz de seinte Esglise, et la determination d'icelle; ou preche, publie, ou maynteigne notoirement, ou escrive, ou publie, ascune cedule par ont le poeple purra estre moerez pur oustir ou tollir les temporelx Possessions de suis ditz Prelatz et Ministres de seinte Esglise . . . ; ou preche . . . qe Richard nadgairs Roy, qi mort est, serroit en pleine vie . . . ; ou qe publie . . . ascune pretense fauxe Prophecie a votre poeple, en commocion et affraye d'icelle; Ils . . . soient arestuz . . . pur les aver corporelment au proschein Parlement lors ensuant, pur respoundre, receyver, et attendre tielx jugementz come ils aueront deserviz, et de eux serrount renduz par Vous et vos heirs et les Paires du votre Roiaume; . . .* Cf. Stubbs, *Const. Hist.* III, 371 c 19 § 404.

[13] These 'constitutions' are printed in Wilkins, *Concilia* III, 314. The royal decree, issued with the assent of the estates (printed Wilkins, *l.c.* p. 328 and Mansi XXVI, 1042) does not belong to this council, but is identical with the parliamentary act 2 *Hen. IV* c 15.—For attempts in the parliament of 1410 to secure a relaxation of the act 2 *Hen. IV* c 15 by having the offenders committed to the royal and not to the bishops' prison, see Stubbs, *Const. Hist.* III, 65, note 4 c 18 § 316.

supplemented as follows: the royal officers are to assist the bishop in making arrests; the king's judges are independently to make inquest of heretics; but suspects are always to be delivered up to the ecclesiastical judges, who give judgment after process before themselves.[14]

This legislation remained operative until the reformation. In all these laws and ordinances the execution of punishment on a heretic depends on the initiative of the diocesan, or of the episcopal court. In this manner England was preserved from the rise of special *inquisitores haereticae pravitatis*,[15] and the prosecution of offenders was thus less harsh. The right of the diocesans to take cognizance of heresy extended—by delegation from the pope—to exempt districts.[16] Besides the bishops and their courts the provincial synods were sometimes engaged in prosecuting heretics; but they seldom appear as pronouncing judgment.[17]

Henry VIII, in a proclamation of the year 1530, impressed on his officers the provisions of earlier laws against heresy and gave certain

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[14] . . . *por tant qe la conusance des Heresies errours ou Lollardries apparteignent as Juges de Seinte Esglise et nemye as Juges seculers.* . . .

[15] Upon occasion of the prosecution of the templars (1309 ff.) the pope sent a commission for special inquisitors in England, Scotland and Ireland. The king gave them safe-conducts, empowered them to proceed *per legem ecclesiasticam* and instructed the royal officers to assist them. Moreover he entrusted a special official with the supervision of the whole proceeding and with the duty of supporting the inquisitors. Rymer, *Foedera* 4th Ed. II, 93, 94, 100, 104, 111, 133; *Historical Papers from Northern Registers* (*Rer. Brit. Scr.* No. 61) 194 ff.—Letter of Benedict XII to Edward III, 6th Nov. 1335 (Theiner, *Monumenta* p. 269 No. 532): . . . *sicut accepimus in eadem Hybernia et Regno aliaque terra tui dominii Anglie non sunt inquisitores hereseos, nec ex officio inquisitionis sue pravitatis hereseos ibidem inveniri et puniri soleant, propter quod iura et privilegia inquisitionis eiusdem pravitatis incognita et inusitata inibi existere dinoscuntur,* . . . ; Wyclif, *De Eucharistia* (ed. Loserth for the Wyclif Society. 1892) 139: . . . *benedictus Dominus regnum nostrum liberatum est ab ista inquisicione heretice pravitatis,* . . . ; Wyclif, *Sermons* (ed. Loserth for the Wyclif Society. 1887 ff.) III, 519: . . . *nobiliores reges Anglie non sinebant in nomine pape intrare in regnum suum vocatos inquisitores heretice pravitatis,* . . . —According to Shirley, Introduction to *Fasciculi Zizaniorum* (*Rer. Brit. Scr.* No. 5) it is doubtful whether the carmelite, Thomas Netter of Walden, was appointed on petition of parliament soon after the council of Pisa inquisitor-general in England.—Cf. also Hinschius, *Kirchenrecht* V, 456, note 4.

[16] Cf. Lyndwood, *Provinciale* Book V tit. 5 p. 296 *de haereticis*, Gloss on *Ordinarii: Episcopi in suis dioecesibus qui habent ordinariam jurisdictionem circa non exemptos suae dioecesis. Circa exemptos vero in sua dioecesi existentes habent jurisdictionem delegatam a Papa* . . . *Cognitio* . . . *haeresis duobus tantum judicibus in jure permittitur viz. Episcopo loci, et Inquisitori haereticae pravitatis a sede Apostolica deputato.*

[17] The constitution, dated 1st July, 1416, of Henry Chichele, archbishop of Canterbury (Wilkins, *Concilia* III, 378) prescribes that bishops, archdeacons and commissaries are to make inquest for heretics within their several districts at least twice a year. After the bishops have given judgment, they are to report the judgment and its execution to the next convocation, and to give up the records of the proceedings to the archbishop's official for safekeeping.—For the various cases of heresy known between 1377 and 1466 and the procedure in each see Stubbs, *Hist. Append.* II pp. 54 ff. to *Ecclesiastical Courts Commission*, 1883.

supplementary rules for dealing with heretics.[18] Three years later 25 *Hen. VIII* (1533/4) c 14, whilst retaining the penal provisions before in force, introduced an alteration of procedure which was in favour of the accused.[19] According to this act, trial is still by the ecclesiastical courts; but it must be public. Further, at least two lawful witnesses are required. Lastly, it is expressly declared that the king's writ *de haeretico comburendo* must be obtained before an offender is executed.[20]

The rapid progress of freer church views compelled the king, who desired no reformation in matters of faith, to take further steps. 31 *Hen. VIII* (1539) c 8 gave proclamations made by the king and his council the force of law, the power so conferred being intended to be particularly wide in cases of heresy.[21] At the same time the six article law was passed, 31 *Hen. VIII* (1539) c 14. It contains in its penal provisions a note of increased severity, in that it punishes, not merely upon refusal to abjure or upon relapse, but on the first expression of heterodox opinion. On the other hand, it is in so far more lenient that under it only the utterance of definite opinions offending against the doctrine of transubstantiation is punished as heresy, that is with death by burning. Speaking against five other leading doctrines is threatened with the punishment of death as felony only when it is done in public preaching, school or meeting, when stubbornly persisted in, or when there is relapse; otherwise the punishment is lighter.[22] The procedure is essentially altered in that the execution of the law is entrusted to royal commissions with punitive powers.[23] Side by side with the six article law there next appeared on the statute book 34 & 35

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[18] Printed Wilkins, *Conc.* III, 737. No one is to spread heretical doctrines by preaching, writing, holding meetings or keeping schools; no one (*curates in their parishes, persons privileged, and other by the law of the church only except*) shall preach without the licence of the bishop of the diocese. Heretical books shall be delivered up. Transgressors shall be arrested on the bishop's motion and remain in prison until they have purged themselves of their errors or abjure. On convicted persons the bishop may impose a fine to be paid to the king, or may keep them in prison. If abjuration is refused (in the document the word *not* is missing before *abjure*) or the heretic be pronounced to have relapsed, then the civil officer shall be present at the sentence given by the bishop and carry it into execution. The justices are to search out heretics, apprehend them and deliver them to the bishop for judgment.—In the same year another proclamation, milder in tone, was issued by the king, intended to promote the surrender of heretical books. Printed in Wilkins, *Conc.* III, 740.

[19] 2 *Hen. IV* c 15 is repealed by s 1 (the language of the act is, however, not quite clear); by s 2, 5 *Ric. II* st. 2 c 5 and 2 *Hen. V* st. 1 c 7 are confirmed in so far as not contrary to the new act; s 7 declares that speaking against the pope and his decrees is not heresy.

[20] Compare above, note 11.

[21] s 2, *sub finem.*

[22] On the six article law compare § 16[2]. According to the words of the act the mere 'holding' of the opinions condemned is punishable. The later amending acts quoted in § 22, note 20, also passed in Henry VIII's reign, do not affect the main provisions given above.

[23] ss 7 ff. The archbishops, bishops and their chancellors or commissaries were to be appointed members of the commissions.

Hen. VIII (1542/3)[24] c 1. Dealing with the denial of doctrines, which had been promulgated by the king in definite form since 1540 or which should be promulgated by him in his lifetime, it reserves the punishment of death for ecclesiastical persons who stubbornly refuse submission or relapse a second time, but does not assign that punishment to lay persons even upon refusal to abjure or repeated relapse.[25] Procedure is to be before the bishop and two justices of the peace, or before two members of the council, or before royal commissioners.

The reign of Edward VI began with the repeal by 1 *Ed. VI* (1547) c 12 of all laws before passed touching matters of belief.[26] Nevertheless, the burning within the next few years of an anabaptist and of a socinian for heresy is on record.[27]

By 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 6[28] the three older

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[24] Cf. also 32 *Hen. VIII* (1540) c 26 *Concerning Christes Religion*, which enacts: *that all and every determinations declarations decrees diffinitions resolutions and ordenaunces, as according to Goddis wourde and Christes gospell by his Majesties advice and confirmation by his lettres patentis undre his Graces greate seale shall at anny tyme hereafter be made sett furth declared decreed diffined resolved and ordeyned, by the said Archebishops bishops and doctours* (a commission appointed by the king) *nowe appointed or other personnes hereafter to be appoincted by his roial Majesty or ellis by the hole clergie of England, in and uppon the matiers of Christes religion and christien faith and the laufull rites ceremonies and observations of the same, shalbe in all and every poincte . . . by all his Graces subjectis . . . fully beleved obeyed observid and perfourmed . . . upon the paynes and penalties therin to be comprised . . . provided . . . that nothing shalbe doon ordeynid defyned or provided by auctoritie of this acte, whiche shalbe repugnant or contrariant to the lawes and statutes of this Realme; . . .* —The act had reference (according to Perry, *Hist. of Engl. Church* II, 170 c 10 § 17) to the intended revision of *The Institution of a Christian Man*, published in 1537 (cf. on this book § 6, note 26). The product of that revision, *The Necessary Erudition of any Christian Man* (cf. § 6, note 27), was, however, first published in 1543 and fell under 34 & 35 *Hen. VIII* c 1.

[25] s 17 enacts that an ecclesiastical person shall—

On the first offence	recant.
On refusal to recant or on a second offence .	abjure and bear a faggot.
On refusal to abjure or on a third offence .	be burned as a heretic and forfeit goods and chattels.

A lay person shall—

On the first offence	recant and be imprisoned for twenty days.
On refusal to recant or on a second offence .	abjure and bear a faggot.
On refusal to abjure or on a third offence .	forfeit goods and chattels and be imprisoned for life.

[26] s 2 repeals: 5 *Ric. II* st. 2 c 5, 2 *Hen. V* st. 1 c 7, 25 *Hen. VIII* c 14, 31 *Hen. VIII* c 14, 34 & 35 *Hen. VIII* c 1, 35 *Hen. VIII* c 5 (this last act had modified some provisions of the preceding one as to procedure) *and all and every other Acte concerning doctrine and matters of Religion.*

[27] Perry, *Hist. of Engl. Ch.* II, 200 c 11 § 30: in May, 1549, Joanna Bocher, on 15th April, 1551, George van Paris. The sentences of the courts which sat under royal commission and with Cranmer as president are printed in Wilkins, *Conc.* IV, 42–45.

[28] *An Acte for the renueng of three Estatutes made for the punishement of Heresies;* it revives 5 *Ric. II* st. 2 c 5; 2 *Hen. IV* c 15; 2 *Hen. V* st. 1 c 7.

enactments against heresy which had been in existence before Henry VIII's time were revived, but not similar statutes made in his reign.

Elizabeth in 1 *Eliz.* (1558/9 c 1) repealed the act of Mary just mentioned and the three older acts specified therein.[29] The idea of heresy is not however thereby abandoned; on the contrary, it is expressly defined, essentially as being whatever is in contradiction to 'the authority of the canonical Scriptures' or 'the first four general councils.'[30] Moreover, arrest by the civil powers of those excommunicated by the ecclesiastical authorities for heresy or erroneous doctrines still remained.[31] In spite of the fact that the heresy laws proper were repealed and that no act of parliament imposed such a penalty,[32] in 1575 there were two cases,[33] and in 1579 one case, of persons burned to death for the anabaptist heresy.[34]

From the reign of James I again, we have accounts of two cases (1612) in which heretics were burned. The old procedure was followed in them: the bishop's court (the bishop with assessors) pronounced sentence, the king directed his chancellor to send the writ *de haeretico comburendo* to the secular executive officer, and the latter carried it into effect.[35] The right of the ecclesiastical courts to inflict fines and imprisonment for heresy was generally recognized even at this time.

The still dangerous weapon was not finally wrested from the

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[29] *An Acte restoring to the Crowne thauncyent Jurisdiction over the State Ecclesiasticall and Spirituall, and abolyshing all Forreine Power repugnaunt to the same*; s 6.

[30] s 8 *Correccion of Heresies* belongs also to the royal prerogative; the power to exercise it can be conferred on *commissioners* (it is part of the *high commission*). s 20 enacts: *The . . . commissioners . . . shall not in any wise have Aucthoritie or Power to order determine or adjudge anny Matter or Cause to bee Heresie but onelye suche as heretofore have been determined ordred or adjudged to bee Heresie by thaucthoritee of the Canonicall Scriptures, or by the first fowre generall Councelles* (cf. however art. 21 in appendix XI), *or any of them, or by any other generall Councell wherin the same was declared Heresie by thexpresse and playne woordes of the sayd Canonicall Scriptures, or suche as hereafter shall bee ordredd judged or determined to bee Heresye by the Highe Courte of Parlyament of this Realme withe thassent of the Clergie in their Convocacion; . . .*

[31] 5 *Eliz.* (1562/3) c 23 s 7: in cases of *Heresie . . . or Errour in Matters of Religyon or Doctryne nowe receyved . . . in the . . . Churche of Englande.* (More fully in § 61, note 19.)

[32] Compare also Coke, *Reports* XII, 56 ff. According to Coke, *Reports* XII, 93 four judges in 9 *Jac. I* gave an opinion that the issue of a writ *de haeretico comburendo* was still allowable (Coke held it not allowable. Compare, however, Coke *Instit.* III, 39 ff.), but that it was safer to effect the condemnation of the heretic through the high commission court.

[33] Fuller, *Church Hist.* Ed. 1845, IV, 390. The order for the burning is in Rymer, *Foedera* 3rd Ed. VI pt. IV, 161. Wilkins, *Conc.* IV, 281.

[34] Perry, *Hist. of Engl. Church* II, 315, note 3 c 19 § 3.

[35] Fuller, *Church Hist.* Ed. 1845, V, 422 ff. Gardiner, *History of England from the Accession of James I*, II, 43. The king's orders to burn are in Somers, *Tracts* II, 400, 403. In a third case there was also a condemnation; the king however, merely caused the condemned to be thrown into prison, where he died. Fuller, *l.c.* 424.

ecclesiastical authorities even by the first revolution. The act abolishing the high commission court, 16 sq. *Car. I* (1640 ff.) c 11, forbade the infliction of fine, imprisonment or corporal punishment in any matter belonging to ecclesiastical cognizance.[36] During the ascendency of the presbyterians in the English house a parliamentary ordinance, dated May the 2nd, 1648, threatened stubborn opposition to certain doctrines with heavy penalties to be imposed by secular judges.[37] But on the restoration a return was made to the previous state of the law, in that 13 *Car. II* (1661) st. 1 c 12 repealed the above mentioned provision of 16 *Car. I* c 11, and further declared that nothing in that act took away the ordinary powers of the bishops and their officers, but that these powers still continued.[38]

Some years later 29 *Car. II* (1677) c 9 abolished the punishment of death as a consequence of condemnation by any ecclesiastical authority. But the power to punish heresy and similar offences by purely ecclesiastical penalties was neither to be abridged nor taken away.[39]

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[36] Cf. § 7, note 36.

[37] Cf. ordinance of the long parliament, dated 2nd May, 1648, *For the punishing of Blasphemies and Heresies, with the several penalties therein expressed.* Stubborn maintenance and publication of opinions against certain specified doctrines [principally those of the triune God, the resurrection, the last judgment, and that the Bible is the Word of God] are to be punished, if abjuration is refused, as felony with death without benefit of clergy. In case of abjuration, the abjurer is to remain in prison until he gives surety, himself and two others, that he will not in future maintain or publish such opinions. Relapse is to be punished as felony with death without benefit of clergy. In case of publication or stubborn maintenance of certain other heresies [viz. that all are saved; worship of images; purgatory; that no one is obliged to believe more than he can comprehend; against the ten commandments; against the sacramental character of baptism and the communion; against infant baptism; in favour of rebaptism; against the permissibility of the English (then presbyterian) church service and against the character of her clergy as true clergy; against the government of the church by presbyteries; against the power of the state (in ecclesiastical matters) as determined by law in England; against taking up arms in a righteous cause for public defence], the offender is to be called on to revoke before the congregation. If he refuses, imprisonment until sureties given, as above.

Ordinance of rump, 9th August, 1650, *Against several Atheistical, Blasphemous and Execrable Opinions, derogatory to the honor of God, and destructive to human society.* This ordinance is directed rather against immoral than irreligious doctrines.

[38] Compare § 7, note 69.

[39] *An Act for takeing away the Writt De Heretico cumburendo.*

s 1: *Bee it enacted . . . That the Writt commonly called Breve de Heretico comburendo with all Processe and Proceedings thereupon in order to the executeing such Writt or followinge or depending thereupon and all punishment by death in pursuance of any Ecclesiasticall Censures be from henceforth utterly taken away and abolished. . . .*

s 2: *Provided alwayes That nothing in this Act shall extend or be construed to take away or abridge the Jurisdiction of Protestant Arch-Bishops or Bishops or any other Judges of any Ecclesiasticall Courts in cases of Atheisme Blasphemy Heresie or Schisme and other damnable Doctrines and Opinions but that they may proceede to punish the same according to his Majestyes Ecclesiasticall Lawes by Excommunication Deprivation Degradation and other*

Since the end of the seventeenth century the competence of the ecclesiastical courts to inflict penalties for non-submission to the doctrines of the established church has gradually been still further restricted,[40] without, however, being entirely destroyed. At present ecclesiastical process against laymen is almost wholly obsolete, both generally and for heresy in particular; but against the clergy for disciplinary purposes appeal is still sometimes made to ecclesiastical tribunals.[41]

Ecclesiasticall Censures not extending to death in such sort and noe other as they might have done before the makeing of this Act. . . .

[40] 1 *Gul. & Mar.* (1688) c 18 s 3 first declared ecclesiastical prosecution for non-conformity inadmissible as against protestant dissenters, provided they observed certain forms and ceremonies.

[41] For the proceedings of the convocations against heretical doctrines in the eighteenth and nineteenth centuries cf. § 54, near notes 62-5.—On 9 *Gul. III* (1697/8) c 35 cf. § 61, note 23.

IV. The Clergy and their Orders.

§ 20.

1. GENERAL.[a]

Since the reformation[1] there have been in England only the three orders of deacons, priests and bishops.[2] The members of these orders form the spirituality. The episcopal office is, according to the prevailing opinion in the church of England, a perfectly distinct one, not merely special dignity combined with the priestly office.[3] The five lower orders of the Roman catholic church, *ostiarius*, *lector*, *exorcista*, *acolutha* and *subdiaconus*, apparently fell into disuse with the introduction of the new prayer-books and form of ordination in Edward VI's reign. But the office of *reader* was maintained for a considerable time and has, indeed, in recent times been revived. It is said to be a survival of the Roman catholic order of *lector*;

[1] For the Anglo-Saxon time cf. Phillips, *Angelsächsische Rechtsgeschichte* § 61.

[2] Introduction to prayer-book form of ordination: *It is evident unto all men diligently reading the holy Scripture and ancient Authors, that from the Apostles' time there have been these Orders of Ministers in Christ's Church: Bishops, Priests and Deacons. . . . And therefore to the intent that these Orders may be continued and reverently used and esteemed in the Church of England; no man shall be accounted or taken to be a lawful Bishop, Priest, or Deacon in the Church of England . . . except he be called, tried, examined and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration or Ordination.*

[3] For the canon law see Richter, *Kirchenrecht* § 103, note 11. In England it was disputed, *e.g.* by Aelfric in a letter to bishop Wulfsin (the so-called *canones Aelfrici*, 992–1001, printed in Thorpe, *Ancient Laws etc.* 441 ff.) that a separate episcopal order was to be distinguished. c 17: . . . *Nis na mare betwyx maesse-preoste and bisceop, buton þaet se bisceop bið gesett to hadigenne preostas, and to bisceopgenne cild, and to halgyenne cyrcan, and to gymenne Godes gerihta, forþan þe hit waere to maenigfeald, gif aelc maesse-preost swa dyde, and hy habbaþ aenne hád, þeah se oðer sý wurðor.* ("There is no difference betwixt a mass-priest and a bishop, save that the bishop is appointed for the ordaining of priests, and confirming of children, and hallowing of churches, and to take care of God's dues; for it would be too multifarious if every mass-priest so did: but they have one order, though the latter have precedence.") The same doctrine was afterwards taught by the lollards and the presbyterians. The same view obtains in *The Institution of a Christian Man*, composed by a committee of bishops and approved by the king (1537). Perry, *Hist. of Eng. Church* II, 152 c 9 § 19.

[a] Blunt, *The Book of Church Law*, Book III c 1.—Phillimore, *Eccles. Law* 108 ff.

but at present there is no *order* of readers, as distinct from the *office*, and the reader is a layman.[4] Similarly there is the office of deaconesses, who likewise are not in ecclesiastical orders.[5]

Spiritual rank is attained by receiving one of the three orders; it attaches to the holder for life irrespective of his filling any particular office. It is lost by degradation; or, since the *Clerical Disabilities Act*, 1870 (33 & 34 *Vict.* c 91), and in the case of priests and deacons, may be voluntarily relinquished if certain formalities are observed.[6]

Orders are received by solemn conferment. The conferment is entitled 'ordination' or 'consecration,' both words designating the same act,[7] though usually, in the language of to-day, the former is applied to the dedication of priests and deacons, the latter to that of bishops. The person who confers the orders must himself be in bishop's orders. At the consecration of a bishop there must further be two others assisting.[8] Similarly at the ordination of deacons and priests certain persons besides the ordaining bishop are to be present or to co-operate.[9] There is no sacrament of orders.[10]

As spiritual rank in general, so also is the possession of orders of every kind independent of the filling of a particular office; nor are orders lost by the surrender of office. There is sometimes in practice a difference between bishop's orders and priest's or deacon's orders in that the former, except in unusual circumstances, are only conferred after the bestowal of a particular office, and indeed are the last step, as it were, in the bestowal, whilst the latter, as a rule, precede it. Thus even in respect of their conferment priest's and deacon's orders exhibit their independence of the office; bishop's,

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[4] On the office cf *reader* cf. § 46.

[5] On deaconesses cf. § 47.

[6] In case of such relinquishment, the right to pension is lost (34 & 35 *Vict.* c 44 s 15, *Incumbents Resignation Act*, 1871).—Compare also the prohibition of such relinquishment in canon 76 of 1604 (appendix XII).

[7] Thus in the prayer-book *The form of ordaining or consecrating of an archbishop or bishop.*

[8] See in the prayer-book form of consecrating; cf. also 25 *Hen. VIII* (1533/4) c 20 ss 3, 4 (appendix X), 26 *Hen. VIII* (1534) c 14 s 5 (§ 39, note 4). On the canon law see Richter, *Kirchenrecht* § 184, note 23. For England Gregory I had answered in 601 upon the inquiry of Augustine (Haddan and Stubbs, *Counc.* III, 21): *Et quidem in Anglorum ecclesia, in qua adhuc solus tu Episcopus inveniris, ordinare Episcopum non aliter nisi sine Episcopis potes . . . Cum . . . fuerint Episcopi in propinquis sibi locis ordinati, per omnia Episcoporum ordinatio sine adgregatis tribus vel quatuor Episcopis fieri non debet.* —For Scotland see § 10, note 6*a*. According to Haddan and Stubbs I, 155, among the ancient Britons and Irish consecration by one bishop was the usage; on the other hand see Loofs, *Antiquae Britonum Scotorumque ecclesiae quales fuerint mores* p. 25. For the East Indies consecration by only two bishops is allowed by 3 & 4 *Gul. IV* (1833) c 85 s 19.

[9] The ordinal prescribes in the cases of all three orders that one bishop should speak the words and lay hands on the ordained. At the ordination of a priest, the priests present; at that of a bishop, the bishops present, are also to lay on hands. Canons 31 and 35 of 1604 (appendix XII) direct the presence, both at the ordination of priests and that of deacons, of certain persons besides the bishop.

[10] See article 25 (appendix XI).

outwardly at least, do not. Following, however, the provisions of canon law,[11] English law even at the present day restricts the conferment of deacon's or priest's orders unless the recipient has the prospect of 'some certain place where he may use his function.' The precise rules are contained in canon 33 of 1604. According thereto ordination is only permissible when the person to be ordained has the sure prospect of a certain office in the disposal of the bishop or of some other, when he is a fellow of some college of Oxford or Cambridge, or when he is a resident master of arts of five years' standing;[12] if the bishop ordains without observing these conditions he must support the person ordained 'till he do prefer him to some ecclesiastical living.'

The conferment of the lower orders must precede that of the next higher. Between ordination as a deacon and ordination as a priest there is to be, as a rule, an interval of one year; priest's orders and deacon's orders cannot be conferred on the same day.[13] Ordination as a deacon presupposes that the person ordained has reached the age of twenty-three; as priests only those may be ordained who are at least twenty-four years of age; as bishops only those who are fully thirty.[14]

The canonical rule that unbaptized persons and women are incapable of receiving orders is observed in England; but not the minute regulations as to *irregularitates ex defectu* and *ex delicto* of baptized men.[15] Instead of them, the only requirements, apart from the conditions as to age just mentioned, are that the bishop

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[11] The history of these provisions will be found in Richter, *Kirchenrecht* § 108; for England compare Phillimore, *Eccles. Law* 120.

[12] By these rules the Roman *titulus beneficii* and, with limitation to masters of arts, the *titulus patrimonii* are maintained; the *titulus mensae* is abolished.

[13] Prayer-book form of ordination: . . . *It must be declared unto the Deacon, that he must continue in that Office of a Deacon the space of a whole year (except for reasonable causes it shall otherwise seem good unto the Bishop)* . . . Canon 32 of 1604 (appendix XII).

[14] Canon 34 of 1604 (printed in appendix XII); so the rubric in the ordinal: *And none shall be admitted a Deacon, except he be Twenty-three years of age, unless he have a Faculty. And every man which is to be admitted a Priest shall be full Four-and-twenty years old. And every man which is to be ordained or consecrated Bishop shall be fully Thirty years of age;* 13 *Eliz.* (1571) c 12 s 4: *And that none shalbe made Mynister* (here equivalent to 'priest') *or admitted to preache or mynister the Sacraments, being under thage of foure and twenty yeres, nor unles he fyrst bring to the Bisshop of that Diocesse, from Men knowne to the Bishop to be of sound Religion, a Testimoniall both of his honest lyfe and of his professing the Doctryne expressed in the said Artycles; nor unless he be able to aunswere and render to the Ordynary an Accompt of his faith in Latyne, according to the said Articles, or have special Gyfte and Habilitie to be a Precher; nor shalbe admitted to thorder of Deacon or Ministerie, unles he shall fyrst subscribe to the saide Artycles;* 44 *Geo. III* (1804) c 43 to remove doubts and make usage in Ireland and England uniform, enacts, that, with reservation of the rights of the archbishops of Canterbury and Armagh to grant faculties, *no person shall be admitted a deacon before he shall have attained the age of* 23 *years compleat, and that no person shall be admitted a priest before he shall have attained the age of* 24 *years compleat.*

[15] On the prohibition of the ordination of women see Richter, *Kirchenrecht* § 104, note 2; for the *irregularitates*, the same authority §§ 105–7.

shall of his own knowledge or by testimony establish that the person is of virtuous life and without crime, and by examination and trial assure himself 'that he is learned in the Latin tongue and sufficiently instructed in the Holy Scripture.'[16]

As evidence of previous good conduct a candidate must produce *letters testimonial*,—according to the canon, from some college of Oxford or Cambridge, or from three or four grave ministers, 'together with the subscription and testimony of other credible persons, who have known his life and behaviour for the space of three years next before.'[17] In the case of one who had resided any considerable time out of the university, archbishop Wake[18] required a certificate that notice had been given in the church of the parish where the candidate lived, on some Sunday at least a month before the day of ordination, of his intention to be ordained at such a time.

The examinations are conducted by the examining chaplains of the bishops, the number of these chaplains varying in different dioceses.[19] The examination for priest's orders is distinct from that for deacon's.[20] The right of examination was, by canon law and usage, vested in the archdeacon, and hence it is he or his deputy who presents to the bishop the persons proper to be ordained. Since the year 1874 there has been also a central examining body, 'to promote the better preparation of candidates for holy orders.'[21] A formal examination upon belief, etc. is contained in the several forms of ordination.

Before ordination in each of the three kinds, the oath of allegiance to the king[22] is to be taken; nor did 28 & 29 *Vict.* c 122, 'An act to amend the law as to the Subscriptions and Declarations and Oaths to be taken by the Clergy of the Established Church of Eng-

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[16] Rubric in ordinal: *And the Bishop knowing either by himself, or by sufficient testimony, any Person to be a man of virtuous conversation, and without crime; and, after examination and trial, finding him learned in the Latin Tongue, and sufficiently instructed in holy Scripture, may . . . admit him a Deacon . . . ;* 13 *Eliz.* (1571) c 12 s 4 (above, note 14); canon 34 of 1604 (appendix XII). Cf. Phillimore, *Eccles. Law* 114 ff.

[17] Canon 34 of 1604; compare 13 *Eliz.* c 12 s 4 (above, note 14). By resolution of the upper house of Canterbury (6th May, 1890; printed in *Church Year-Book*, 1891) detailed requirements in regard to testimonials were agreed and recommended to the bishops.

[18] His letter, written after deliberation with his bishops (1716), is printed Cardwell, *Doc. Annals* II, 368. Many other recommendations are contained in it.

[19] Canon 35 of 1604 (appendix XII) treats of the examination to be undergone prior to ordination.

[20] Canon 34 of 1604. Blunt. *The Book of Church Law* 200, 210. Compare the agreement (1886) of all the English bishops as to the subjects of examination, *Church Year-Book*, 1891, p. 7.

[21] The particulars of this examination will be found in the *Church Year-Book*, 1891, p. 6.

[22] 28 & 29 *Vict.* (1865) c 122 *Clerical Subscription Act;* 31 & 32 *Vict.* (1868) c 72. The latter (s 143) does not touch *the Oath of Homage taken by Archbishops and Bishops in the Presence of Her Majesty.*

land,' affect the oath of canonical obedience to the bishop, or the oath of obedience to the archbishop taken by bishops on consecration. A declaration of assent to the thirty-nine articles of religion, the book of common prayer and of the ordering of bishops, priests and deacons is required of every person about to be ordained priest or a deacon.[22a] [23]

Ordination of priests and deacons must be by the competent bishop, unless that bishop has granted letters dimissory. Competent are, according to the rule of canon law still followed, the bishops of the diocese wherein the candidate was born, of that where his domicile is and of that wherein he has filled office. But in extension of a privilege conferred by the pope, for members of any college in the two universities, every bishop is competent.[24]

The conferment of orders gives the recipient the capacity or authority to perform certain ecclesiastical acts. These acts are set forth or indicated in the words of ordination.[25] Bishop's orders alone invest the holder with the power of conferring orders on others, of holding confirmations and of consecrating churches and burial places. The possession of such orders is a previous condition necessary to the exercise of the functions of an archbishop, or of a diocesan, suffragan, assistant or coadjutor bishop. Priest's orders empower to administer the communion and to give absolutions and benedictions;[26] none but a priest can receive a 'parsonage, vicarage, benefice or other ecclesiastical promotion or dignity.'[27] Deacon's orders do not, properly, confer a position of independent responsi-

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[22a] 28 & 29 *Vict.* c 122 s 4.

[23] As to the oath of canonical obedience cf. 28 & 29 *Vict.* c 122 s 12, and 31 & 32 *Vict.* c 72 s 14[4].

[24] Canon 34 of 1604. Phillimore, *Eccles. Law* 123, 137. Richter, *Kirchenrecht* §§ 109, 110. *The competentia ratione familiaritatis*, first generally recognized by the council of Trent, seems not to have been admitted in England. When several bishops are competent, letters are not required in England from the others. Letters testimonial are always exacted, and if they are signed by clergy who do not belong to the diocese of the ordaining bishop, countersignature of the bishops set over them is usual. The upper house of the convocation of Canterbury approved this practice by resolution of May 6th, 1890 (above, note 17).

[25] The words of conferment are, in the case of a deacon: *Take thou Authority to execute the Office of a Deacon. . . . Take thou Authority to read the Gospel in the Church of God, and to preach the same, if thou be thereto licensed by the Bishop himself* (cf. note 28); in the case of a priest: *Receive the holy Ghost for the Office and Work of a Priest in the Church of God, . . . Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained. . . . Take thou Authority to preach the Word of God, and to minister the holy Sacraments in the Congregation, where thou shalt be lawfully appointed thereunto.*

[26] See the words of the ordinal quoted in note 25; in respect to the eucharist cf. also 14 *Car. II* c 4, *Act of Uniformity*, s 10 (note 27).

[27] 14 *Car. II* (1662) c 4, *Uniformity Act*, s 10: *. . . no person . . . shall . . . be capable to bee admitted to any Parsonage Vicarage Benefice or other Ecclesiastical Promotion or Dignity nor shall presume to consecrate and administer the Holy Sacrament of the Lords Supper before such time as he shall be ordained Preist . . .* 13 *Eliz.* (1571) c 12 s 3 is thus amended.

bility;[28] so that a deacon may only use his orders 'as a chaplain to some family, or as a curate to some priest, or as a lecturer without title.'[29]

The possession of deacon's or priest's orders is attested by *letters of orders.*

§ 21.

2. PARTICIPATION OF THE CLERGY IN THE DELIBERATIONS OF PARLIAMENT.[a]

In Anglo-Saxon times the bishops took part in the national council or '*witenagemot*' side by side with the temporal magnates. But as the term 'magnates' was apparently not very strictly defined,[1] so besides the bishops others of lower rank were often present for special reasons.[2] In particular, as the monasteries grew in importance, abbots appeared in ever-increasing numbers.[3]

This state of affairs was still continued under the first Norman kings. At the assemblies at the king's court, the substitute for the

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[28] The functions of a deacon are expressed in the ordinal: *It appertaineth to the Office of a Deacon, in the Church where he shall be appointed to serve, to assist the Priest in Divine Service, and specially when he ministereth the holy Communion, and to help him in the distribution thereof, and to read holy Scriptures and Homilies in the Church; and to instruct the youth in the Catechism; in the absence of the Priest to baptize infants, and to preach, if he be admitted thereto by the Bishop. And furthermore, it is his Office, where provision is so made, to search for the sick, poor and impotent people of the Parish, to intimate their estates, names, and places where they dwell, unto the Curate, that by his exhortation they may be relieved with the alms of the Parishioners and others.*

[29] Cf. Phillimore, *Eccles. Law* 134, 314.

[1] Compare, however, Stubbs, *Const. Hist.* I, 139 c 6 § 52.

[2] This is deducible *e.g.* from the introductions to the laws of Ine (688 to 726–8) and Aethelstan (924–940) II (*and Godes þeôwa*).

[3] Examples of the number of abbots present are brought together in Stubbs, *Const. Hist.* I, 139, note 3, 140 c 6 § 52.

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[a] Gneist, *Engl. Verfassungsgeschichte* §§ 22, 24, 29.—Stubbs, *Const. Hist.* c 15 §§ 186, 198, 200; c 20 §§ 428–30, 432.—For the parliamentary sittings of the clergy after the time of Edward I see also the references under § 54 note *a* II.

Collections of writs of summons to parliament, etc.: Dugdale. *A perfect copy of all Summons of the Nobility to the Great Councils and Parliaments of this Realm from 49 Hen. III to 1 Jac. II.* London, 1685.—Palgrave (Cohen), Francis, for the *Record Commission. The Parliamentary writs and writs of Military Summons together with the Records and Muniments relating to the suit and service due and performed to the king's High Court of Parliament and the Councils of the Realm, or affording evidence of attendance given at Parliaments and Councils.* 1827–34. 3 vols.; the 2nd in three parts (relates to the times of Ed. I and Ed. II).—Prynne, William. *Brief Register, Kalendar and Survey of the several Kinds and Forms of Parliamentary Writs.* 4 parts. 1659–64. (Pt. I contains writs of summons from the years 1205–1483. Pt. III has the separate title *Brevia Parliamentaria Rediviva.*)—*Report of the Lords' Committees on the Dignity of a Peer of the Realm.* 4 vols. 1819 ff. (Vol. I contains as *First Report* the history of the legislative assemblies from 1066 to 1707; vols. II and III contain appendix I thereto, consisting of a reprint of the writs of summons to parliament from John to Edward IV; vol. IV contains appendices II–IV to the *First Report* and the *Reports* 2–4, here irrelevant.)

earlier *witenagemot*, there attended the highest state officials and a number of the king's tenants-in-chief together with their followers. Among these state officials were numerous members of the clergy superior and inferior. The tenants-in-chief included not only the bishops,[4] but also many abbots, and a few canons and parish priests.[5] The number of those present at the assemblies varied in an extraordinary manner. The king listened in weightier matters to the counsel of the more important members, but was not bound to make his measures dependent on their consent.[6] Nor had any definite persons the right of being summoned: actual participation in the assemblies at the king's court and their later developments[7] was, apart from exceptional cases, confined to those most prominent by official position or extent of possessions.[8] Of the clergy appeared, as a rule, the archbishops and bishop, as also—at first in varying numbers—abbots of the larger monasteries, some priors, and heads of orders. From time to time in the period of transition from the end of the twelfth to the end of the thirteenth century, mention is further made of the attendance of deans and archdeacons.[9] [10]

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[4] It is disputed whether the bishops in the middle ages sat in the national council merely as secular barons or as ecclesiastical dignitaries. See Stubbs, *Const. Hist.* I, 388, note 1 c 11 § 123. The historical reason of the obscurity which surrounds the question is that the feudal idea was extended to non-feudal relations, without being fully carried out in all its consequences.—It was Lanfranc, not the king, who appointed and invested according to old custom bishops Ernostus and Gundulfus of Rochester (Eadmer, *Hist. Nov.*; *Rer. Brit. Scr.* No. 81; p. 2), as also Anselm the next bishop Radulfus (Eadmer, *l.c.* p. 196). After 1148 the chapter seems for some time to have exercised the right of electing. Cf. Wharton, *Anglia Sacra* I, 384. King John by ordinance of 22nd Nov. 1214 (printed in Wharton, *Anglia Sacra* I, 386; cf. also the information to the chapter of Rochester sent by the king on the same day, printed in Rymer, *Foedera* 4th Ed. I, 126) conveyed to the archbishop of Canterbury the patronage in respect of the bishopric of Rochester, inclusive of the right to invest the bishop with the temporalities. Nevertheless, the bishop of Rochester appeared at the national council. On the position of the bishop of Llandaff after the attachment of Wales to England see Coke, *Inst.* IV, 283; on the position of the bishop of Sodor and Man, § 33, note 25.

[5] Gneist, *Engl. Verfassungsgesch.* § 7, p. 104, note 1, states (after Ellis, *Introduction to the Domesday Book*, 1833, I, 361 ff.) that there are set down in the *Domesday Book* as holding immediately from the king: 19 archbishops and bishops (among them some of Normandy), 20 canons, 56 abbots, abbesses, abbeys, 38 churches, 11 priests, 2 deacons, 3 chaplains.

[6] So Gneist, *Verfassungsgesch.* § 5.—Stubbs, *Const. Hist.* I, 398 ff. c 11 §§ 124, 125 ascribes to the assembled magnates a somewhat more extensive influence.

[7] From Henry II's reign these meetings gain in importance; the name *parliament* appears in the reign of Henry III, without, however, until a century later being strictly confined to the national council.

[8] The custom had grown up, probably as early as Henry I, but at latest in the beginning of Henry II's reign (Stubbs, *Const. Hist.* I, 608 c 13 § 159), of inviting these prominent persons by separate writs; general summonses were issued through the sheriffs.—The presence of *secundae dignitatis barones* at the council of Northampton, 1164, is attested by William Fitzstephen (*Rer. Brit. Scr.* No. 67) III, 67.

[9] Stubbs, *Const. Hist.* I, 610 c 13 § 159.—Benedict (*Rer. Brit. Scr.* No. 49) I, 145: *Venerunt etiam illuc* (to the council of London, March, 1177) *tot abbates, tot decani, tot archidiaconi quot sub numero non cadebant. Venerunt etiam illuc comites et barones regni, quorum non est numerus. Et congregatis*

After the beginning of the thirteenth century we find that on some occasions, besides the before mentioned persons, specially elected representatives of certain bodies were summoned. Such summonses were, for the most part, caused by the endeavour to obtain a general grant of taxes without the necessity of entering into negotiations with various separate organizations.[11] The first known examples of the attendance of such representatives occur in the year 1213. At the council of St. Albans in 1213, representatives of communities on the royal domain lands were present. For the council of Oxford, held later in the same year, it was directed that four men from each county should present themselves. A further experiment was made in 1254:[12] at the national council of April the 26th two knights from each shire and representatives of the clergy from each diocese were to appear, to report the amount of the aid which those whom they represented were prepared to grant.[13] At the

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omnibus in (aula) regia apud Lundonias, . . . In 1265 to the great parliament of Simon de Montfort, besides abbots, priors, and heads of orders, four deans were summoned. (Stubbs, *Const. Hist.* II, 96 c 14 § 177.)—It is to a church council rather than a national that we must refer the passage in Roger de Wendover, *Flores Historiarum* (*Rer. Brit. Scr.* No. 84) II, 83: *Eodem anno* (1213), *octavo Kalendas Septembris, convenerunt in civitate Londoniarum apud sanctum Paulum Stephanus, Cantuariensis archiepiscopus, cum episcopis, abbatibus, prioribus, decanis et baronibus regni, ubi archiepiscopus indulsit tam ecclesiis conventualibus quam presbyteris saecularibus, ut horas canonicas in ecclesiis suis, audientibus parochianis, suppressa voce cantarent.*

[10] The archbishops and bishops received separate writs of summons. Other ecclesiastical persons who were to attend were generally also invited by special writ. Instances, however, occur—analogous to general summons through the sheriff—of general summons through the bishop. Compare *e.g.* the oldest writ preserved, addressed to the bishop of Salisbury in 1205. (Stubbs, *Sel. Chart.* 282 after *Report on the Dignity of a Peer*, app. I p. 1): *Rex episcopo Sarisburiensi. Mandamus vobis rogantes quatenus omni occasione et dilatione postpositis, sicut nos et honorem nostrum dilígitis, sitis ad nos apud Londonias die Dominica proxima ante Ascensionem Domini, nobiscum tractaturi de magnis et arduis negotiis nostris et communi regni nostri utilitate, quoniam super hiis quae a rege Franciae per nuncios nostros et suos nobis mandata sunt, unde per Dei gratiam bonum speramus provenire, vestrum expedit habere consilium et aliorum magnatum terrae nostrae quos ad diem illum et locum fecimus convocari; vos etiam ex parte nostra et vestra abbates et priores conventuales totius diocesis vestrae citari faciatis ut concilio praedicto nobiscum intersint, sicut diligunt nos et communem regni utilitatem.*

[11] Cf. § 4, near notes 74 ff.—Riess, *Geschichte des Wahlrechts zum Englischen Parlament*, Leipzig, 1885, pp. 1–14 seeks to show that in these older times the chief aim of every summoning of representatives of the counties, etc. was, not that they might *grant* taxes, but to control the local officers of the king and to enrol the elected representatives for service in the *collection* of taxes.

[12] For similar cases in 1222 and 1227 see Stubbs, *Const. Hist.* II, 222 c 15 § 208.

[13] The summons to the knights (1254) is printed in Stubbs, *Sel. Ch.* 376 after *Report on the Dignity of a Peer*, app. I p. 13. Report of queen Eleanor and Richard of Cornwall to the king, who was on the continent, 14th Feb. 1254, printed in Shirley, *Royal Letters* (*Rer. Brit. Scr.* No. 27) II, 101:—

. . . habito tractatu cum praelatis et magnatibus . . . super subsidio vestro, videlicet in quindena S. Hilarii proximo praeteriti . . . ; respond-

parliament of the 13th October, 1255, *procuratores clericorum* from the several archdeaconries or dioceses attended.[14] But whilst the representatives of the shires were again summoned to the parliaments of 1261 and 1264, and the representatives of the shires and towns to the parliament of 1265 and more regularly to all parliaments after the beginning of the reign of Edward I,[15] no invitation was issued, as far as is known, in the years specified to representatives of the whole body of the inferior clergy. Special representatives of the cathedral chapters were summoned to a parliament which was to meet at Winchester on June the 1st, 1265.[16] For January, 1283, the king summoned laity and clergy, divided according to the ecclesiastical provinces, to two assemblies, one to be held at North-

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erunt nobis archiepiscopi et episcopi, quod si rex Castellionis venerit contra vos in Wasconiam singuli eorum de bonis propriis vobis subvenient, . . . sed de auxilio clericorum suorum vobis faciendo nihil facere potuerunt, sine assensu eorundem clericorum, . . .

Praeterea . . . omnes comites et barones regni vestri potentes ad transfretandum ad vos venient in Wasconiam cum toto posse suo; sed de aliis laicis ad vos non transfretaturis non credimus aliquod auxilium ad opus vestrum obtinere, nisi . . .

Dominationi igitur vestrae innotescat quod cum clericis et laicis praedictis habituri sumus tractatum apud Westmonasterium in quindena Paschatis proximo futuri super auxilio praedicto, . . .

[14] *Annales de Burton* (*Rer. Brit. Scr.* No. 36; *Annales Monastici*) I, 360 ff.: *. . . Post festum Sancti Michaelis autem tenuit rex parliamentum suum apud Westmonasterium, convocatis ibidem episcopis, abbatibus, et prioribus, comitibus, et baronibus, et totius regni majoribus; . . . Episcopi vero, abbates, priores, et procuratores qui ibidem pro universitate affuerunt, nolentes hujusmodi exactioni adquiescere, sed potius decernentes fore resistendum et contradicendum, rationibus et gravaminibus in scriptis redactis et allegatis, per fideles et discretos nuncios electos eadem gravamina summo Pontifici sub sigillis destinarunt. Quorum tenor talis est:—*

'Procuratores clericorum beneficiatorum archidiaconatus Lincolniae pro tota communitate proponunt, . . .'

'Proponunt procuratores subditorum ecclesiarum Covintrensis et Lichfeldensis dioecesis; . . .'

De singulis dioecesibus totius regni consimiles ibidem confecti sunt articuli, et summo Pontifici pro universitate similiter destinati ut supradictum est.

[15] The dates are collected in Stubbs, *Const. Hist.* II, 231 ff. c 15 § 214.

[16] The summons is printed in Stubbs, *Select Charters* 418: *Rex decano et capitulo Eboracensi salutem. Cum praelatos et magnates regni nostri jam vocari fecerimus quod sint ad nos apud Wintoniam primo die Junii proximo venturi ad tractandum nobiscum super nostris et regni nostri negotiis quae sine eorum praesentia finaliter expleri nolumus, vobis mandamus in fide et dilectione quibus nobis tenemini, firmiter injungentes quatenus modis omnibus duos de discretioribus concanonicis vestris ad dictos diem et locum mittatis qui plenam habeant potestatem vice vestra ad tractandum nobiscum una cum praefatis praelatis et magnatibus super negotiis antedictis, et ad faciendum nomine vestro quae vos ipsi facere possetis si praesentes ibidem essetis. Et hoc . . . nullatenus omittatis. T. R. apud Gloucestriam, XV die Maii.* This summons was issued by the king, then a prisoner in the hands of Montfort. (On 28th May prince Edward escaped.) The parliament of Winchester which was to meet on 1st June is different from the parliament of Westminster (or London) of 1265, which sat from January to March, and to which representatives of the shires and towns were summoned.

ampton, the other at York.[17] It was perhaps intended to introduce joint deliberation by the clergy and laity of each province. Nevertheless, the assemblies of the clergy remained separate from those of the laity. The summons to both to debate by provinces was not repeated.[18] Not until 1295 did Edward I make a new attempt to bring about a single grant of the taxes to be paid by clergy and laity. He summoned to parliament an extraordinary number of prelates, among them sixty-seven abbots. The writs of summons to the bishops contained an instruction (beginning with the word *praemunientes*) to bring with them the heads of their chapters, their archdeacons, a representative of each chapter and two representatives of the rest of their clergy.[19] The council so summoned met duly; but resolved itself into three sections: 1. the barons and knights of the shires; 2. the representatives of the cities and boroughs; 3. the clergy. Each of these sections deliberated apart and passed separate resolutions. The prelates appear to have deliberated with the rest of the clergy, the archbishop of Canterbury presiding.[20] Thus, if we leave out of view the form of summons, there was hardly any difference between this meeting of the clergy and the similarly constituted national synod of the church. Even the distinguishing form of summons was not retained in the following years. On the contrary, we find the king, instead of including the summons to the inferior clergy in those to the several bishops, merely bidding each archbishop to summon for himself his clergy to parliament[21]—a

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[17] See more in Stubbs, *Select Charters* 460 ff. The clergy were to be invited through the archbishops, the laity through the sheriffs. The writ addressed to the archbishop of Canterbury, dated 22nd Nov. 1282, is to be found in *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77) II, 486 and Wilkins, *Conc.* II, 91.

[18] For the history of the granting of taxes and of the summoning of synods by the king important is a purely ecclesiastical national council of 1294, on which see Stubbs, *Sel. Charters* 479 ff.

[19] Stubbs, *Select Charters* 484: *Rex . . . Cantuariensi archiepiscopo . . . salutem.* (Similarly to each of the other bishops) *. . . vobis mandamus, . . . quod die Domenica proxima post festum Sancti Martini . . . apud Westmonasterium personaliter intersitis. Praemunientes priorem et capitulum ecclesiae vestrae, archidiaconos, totumque clerum vestrae dioecesis, facientes quod iidem prior et archidiaconi in propriis personis suis, et dictum capitulum per unum idemque clerus per duos procuratores idoneos, plenam et sufficientem potestatem ab ipsis capitulo et clero habentes, una vobiscum intersint, modis omnibus tunc ibidem ad tractandum, ordinandum et faciendum, nobiscum et cum ceteris praelatis et proceribus et aliis incolis regni nostri.* The persons and representatives thus summoned are exactly the same as those who, according to the constitution of the southern provincial synod, were entitled to appear at such a synod. The same persons and representatives were likewise summoned by the king in 1294 by writ addressed to each bishop severally. But in that case the summons was to a purely ecclesiastical council: *ad tractandum una vobiscum et ceteris praelatis ac clero ejusdem regni* (Stubbs, *Sel. Charters* 480, from *Report on the Dignity of a Peer*, app. I p. 59).

[20] Compare Stubbs, *Sel. Charters* 483. Bartholomaeus de Cotton (*Rer. Brit. Scr.* No. 16) 299. Similarly, for example, the clergy appeared in parliament in 1296, but again deliberated apart. B. de Cotton, 314.

[21] So *e.g.* in 1304. But whilst referring to the royal order, the archbishop summons the clergy to appear before *himself* on the Sunday *before* the meeting

proceeding which had already had many precedents in the assembling of church councils.[22]

But all the kings' efforts to induce the lower clergy to take a real part in the national councils were encountered by stubborn resistance. In outward form the clergy obeyed the royal or archiepiscopal summons. They chose their representatives or *proctors* and empowered them to act on their behalf in the discussions of parliament, at the opening of which the representatives appeared.[23] But the clerical deputies always found means to detach themselves under some form or other from the laity and to form a separate assembly.

Though the attempts of Edward I to combine clergy and laity in one deliberative assembly had produced no satisfactory result, Edward II again essayed to realize the project. By writ of the 25th (27th) of March, 1314 (7 *Ed. II*), he ordered the archbishops to summon the clergy of their provinces to discuss with royal commissioners to be appointed the granting of an aid. But again the opposition was strong, and the attempt was not repeated.[24]

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of parliament. (Document in Atterbury, *Rights*, appendix XIV c). Summons of the archbishop by the king's order to the parliament of Dec. 1311 in Wilkins II, 408. On the form of the summons to the parliament of 1312 see below, note 25.

[22] Compare § 54, near note 21.

[23] Atterbury, *Rights* 236 ff. Joyce, *Synods* 278, 279.—Stubbs, *Const. Hist.* III, 417 c 20 § 420.—In the parliament of Carlisle (1307) the lower clergy were represented by dignitaries and by delegates. (List in *Rotuli Parliamentorum* I, 189. Compare Stubbs, *Const. Hist.* II, 165, note 1 c 14 § 182 for the constitution of the parliaments from 1302 to 1307.) Similarly the presence of representatives of the lower clergy in parliament is sometimes mentioned in the reigns of Richard II, Henry IV and Henry VI (examples in Hody, *Hist. of Engl. Councils* II, 420 ff.). In some instances during Richard II's reign the prelates and lower clergy allowed themselves to be represented in parliament by a single layman as their common delegate (cases in Hody, *l.c.*). Numerous examples of authorities to represent ecclesiastical electoral bodies in parliament are given, from the years 1295–1425, in Atterbury, *Rights*, app. XI, where see also an authority (1503) for both parliament and convocation. In earlier times, as a rule, different persons were chosen as representatives for parliament and convocation and such cases are also found later. Joyce, *l.c.*, after Atterbury, *Rights*, Addenda pp. 616–626. Compare also in Wilkins II, 534 the *executio episcopi Lincolniensis* as a consequence of a summons by the archbishop to a provincial council (1323): only a short time was left but the archiepiscopal summons could be obeyed, *si dictus clerus procuratoribus suis pro parliamento jam destinatis, ad consentiendum de his, quae in dicto concilio provinciali . . . ordinari contigerit seu concedi, potestatem liberam transmiserit et mandatum speciale.* Even from post-reformation times elections of representatives in parliament by ecclesiastical electoral bodies are given in Atterbury, *Rights*, Addenda 616–626 (Joyce, *l.c.*) as follows: 1529 (Exeter, the register of which was most accessible to Atterbury), 1536 (York), 1538 (Exeter), 1539 (York), 1541, 1542 (Exeter), 1544 (Exeter and London), 1545, 1547, 1552, 1553, 1554 (Exeter), 1570 (Salisbury), 1572 (Exeter), 1584 (Salisbury), 1588 (Peterborough), 1614, 1620 (Exeter), 1623 (Lichfield and Coventry), 1627 (Exeter), 1676 (Peterborough).

[24] For the archiepiscopal summons, wherein the royal summons to the archbishop is repeated, and the protest of the clergy, see Wilkins II, 442. The royal summons ran: *vobis mandamus, rogantes, quatenus . . . sitis in propria persona vestra apud Westmonasterium . . . coram fidelibus nostris ad hoc deputandis, ad tractandum cum eisdem super competenti auxilio a clero provinciae vestrae Cantuar. nobis impendendo . . . prout in proximo parliamento nostro apud Westm. habito, tam per clerum, quam per communita-*

A summons of the inferior clergy to a tax-granting parliament (that of York) in such a way that the *praemunientes*-clause was contained in the summons to the bishops, whilst at the same time the archbishops were also bidden themselves to invite the inferior clergy, was issued, so far as we know, for the first time on the 29th of July, 1314 (8 *Ed. II*).[25] The same procedure was repeated in the following years; after 1332 (6 *Ed. III*) it became fixed, and from that time forth the *praemunientes*-clause became an essential part of the summons of a bishop to parliament.[26] The relation of these two simultaneous summonses to one another is further complicated by the fact that sometimes the archbishop determined a different time and place of assembly from that fixed by the king, and that he summoned sometimes to parliament and sometimes *coram nobis*, apparently without difference of meaning.[27]

After, at latest, the first years of the reign of Edward III we can no longer distinguish the tax-granting assemblies of the clergy from the ordinary provincial synods. This may be a result of a gradual fusion of the parliamentary and the synodal assemblies; but perhaps, on the other hand, the parliamentary meetings fell out of vogue whilst, as a compensation, the provincial councils extended the scope of their operations.[28] Anything beyond a mere formal

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tem regni nostri extitit concordatum; et prout per praedictos fideles nostros eritis requisiti. Et ad eundem diem venire faciatis coram dictis fidelibus nostris, suffraganeos vestros, decanos et priores etc. . . . (In Atterbury, *Rights*, app. XIII the summons is dated 27th, by Wilkins *l.c.* 25th March.)

[25] Atterbury, *Rights* 231. The writs to the several bishops (also to the archbishops) with *praemunientes*-clause are printed in Dugdale, *Summons* 97; the instruction to each of the archbishops to summon the inferior clergy is printed in Atterbury, *Rights*, app. XIV *a*.—The summoning of the clergy to parliament through the archbishop alone (at the king's request) had taken place several times (cf. above, note 21). A transition from this form to the double summons by the archbishops and by each bishop severally, is exhibited by the king's writ of 8th Oct. 1312 to the archbishop of Canterbury, and to the vicar-general of the absent archbishop of York. This writ (printed in Dugdale, *Summons* 78) runs: . . . *mandamus, rogantes; quod praemuniatis decanos et priores ecclesiarum cathedralium, ac etiam capituli, necnon abbates, archidiaconos ac totum clerum vestrae dioeceseos totiusque vestrae provinciae Cantuariensis, quod* . . . *Parliamento in Octabis Sancti Martini proximo futuro* . . . *exhibeant se praesentes.*

[26] Atterbury, *Rights* 236. For examples of writs with *praemunientes*-clause from the year 1328 see Wilkins II, 545.

[27] Upon the earlier cases of 1304 and 1311 see note 21. In 1321, for example, the archbishop by the king's command summons the inferior clergy *quod compareant in* . . . *parliamento apud Westmonasterium prout hactenus fieri consuevit* . . . (Wilkins II, 506). In 1329 the king issued to every bishop a writ containing a *praemunientes*-clause; *nolentes tamen negotia nostra praedicta prae defectu praemunitionum praedictarum, si forsan minus rite facta fuerint, aliqualiter retardari* (this clause was customary under Edward II and Edward III. Atterbury, *Rights* 237), he calls on the archbishop to summon for himself the clergy of his province to parliament (*commune consilium regni*). Upon this the archbishop issues a summons to appear before himself (*compareant coram nobis*), Wilkins II, 557.—Example of a similar double summons, dated 15th May, 1321, in Atterbury, *Rights*, app. XIV e and Palgrave, *Parl. Writs* II, div. II, 234 No. 1, 236 No. 6.

[28] Compare § 54, note 14.

appearance of the inferior clergy at those assemblies to which the name of parliament now became restricted, was by degrees abandoned.[29]

The prelates were from ancient times members of the national council. They, too, sometimes deliberated apart from the secular members. This was especially the case during the time when parliament in its modern form was in progress of development; and several instances are on record.[30] In order not to come into open conflict with the pope, the ecclesiastical magnates took no part in the passing of many important enactments levelled against papal encroachments.[31] Acting moreover on the principle that the church

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[29] For the last traces of the lower clergy exercising a right of electing representatives to parliament, see above, note 23.—Under Edward VI, 22nd Nov. 1547, the lower house of convocation proposed apparently *ut . . . convocatio hujus cleri, si fieri possit, assumatur et co-optetur in inferiorem domum parliamenti sicut ab antiquo fieri consuevit.* (Wilkins, *Concilia* IV, 15; Cardwell, *Synodalia* II, 419. Compare, however, two other reports there. According to one of these request was made either for a fusion with parliament or for an assurance that laws of ecclesiastical purport shall only be promulgated with the consent of convocation. According to the other the only demand was that convocation should be heard before the promulgation of debatable acts affecting the church.)

[30] Compare, for example, as to the council at Westminster in 1244, Stubbs, *Cons. Hist.* II 62 f. c 14 § 175; as to the parliaments of 1331 and 1332, *l.c.* III, 445, note 1 c 20 § 426.—See also the petition of the lower house, 1381 (*Rotuli Parl.* III, 100), in which the wish is expressed that in a particular case there might deliberate *les Prelatz par eux mesmes, les grantz Seigneurs Temporelx par eux mesmes, les Chivalers par eux, les Justices par eux, et touz autres Estatz singulerement.*

[31] The following are the most important laws to which the prelates are not mentioned as consenting or against which they even protested: *Stat. Karlioli* 35 *Ed. I* (1306/7): *post deliberacionem plenariam et tractatum cum Comitibus, Baronibus, proceribus, et aliis nobilibus, ac communitatibus . . . de consensu eorum.* [So with the resolution on which this is based, 33 *Ed. I: de consilio Comitum, Baronum, Magnatum, procerum, et aliorum nobilium, et regni sui communitatum.*] *Stat. de Prorisoribus* 25 *Ed. III* (1350/1) st. 4? (In the text of the act we read: *par assent de touz les grantz et la Communalte.* The word *grantz* is mostly used only of the secular magnates, but sometimes of both secular barons and prelates. Perhaps the ambiguous term is intentional. At any rate the prelates did not expressly protest. Cf. Stubbs, *Cons. Hist.* II, 413 c 16 § 259; III, 340 c 19 § 392.) *Stat. contra adnullatores Iudiciorum Curiae Regis* 27 *Ed. III* (1353) st. 1 c 1? (In the text we read: *assentu est et acorde par notre . . . Seigneur le Roi et les grantz et communes.* It was passed at a *consilium* which *Prelatz, Grantz et Communes* attended. Cf. *Rot. Parliament.* II, 252 [No. 33], 253 [No. 42], 257 [No. 16].) According to the text of 38 *Ed. III* st. 2 c 1 the acts against the encroachments of the pope, particularly those in 25 *Ed. III* and 27 *Ed. III* were through it confirmed by the king: *de lassentement et expresse volunte et concorde des Ducs, Contes, Barons, Nobles et communes.* Who assented to the other parts of the act is not shown by the text of it. Cf. here *Rotuli Parl.* II, 285: *As queles Ordinances* [the act 38 *Ed. III* st. 2] *issint lues les Ducs, Countes, Barons, et Communes se assenteront bien si il plust au Roi, les Prelatz tout dis fesantz lour Protestations de rien assenter ne faire qe purra estre ou tourner en prejudice de lour Estat ou Dignite.* 3 *Ric. II* (1379/80) c 3 [in text of act: *le Roi par ladvis et commune assent de touz les seigneurs temporels.* The act was passed under incitement from the king and on the petition of the commons. *Rot. Parl.* III, 71 (No. 4), 82 f. (No. 37)]. 7 *Ric. II* (1383) c 12 [in text of act: *assentuz est . . . par mesmes*

sheds no blood, they, as a rule, withdrew when the upper house, in its judicial capacity, was about to pronounce sentence of death or mutilation.[32] On the other hand, the king and the secular members of parliament at all times held fast the theory that the prelates as members of the national council were merely on an equal footing with the rest, and did not form a separate whole, whose assent was necessary to give validity to the resolutions of parliament.[33] Thus

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les seigneurs as in 3 *Ric. II* c 3]. 13 *Ric. II* (1389/90) st. 2 cc 2 and 3 [assent *des grantz de son roialme.* The protest of the archbishops of Canterbury and York in the name of the whole clergy was at their wish entered on the rolls. *Rotuli Parliamentorum* III, 264: . . . *quod nolumus nec intendimus alicui Statuto in presenti Parliamento nunc noviter edito, nec antiquo pretenso innovato, quatenus Statuta hujusmodi, seu eorum aliquod, in restrictionem Potestatis Apostolice, aut in subversionem, enervationem, seu derogationem, Ecclesiastice Libertatis tendere dinoscuntur, quomodolibet consentire, set eisdem dissentire, reclamare, et contradicere.* . . .] [To the chief praemunire act, 16 *Ric. II* (1392/3) c 5, the spiritual magnates assented, but (in respect to part of its provisions): *fesantz protestacions qil nest pas lour entencion de dire ne affermer qe notre Seint Piere le Pape ne poet excomenger Evesques ne quil poet faire translacions des prelatz solonc la ley de Seinte Esglise.*] In reformation times the spiritual magnates did not assent to the uniformity act 1 *Eliz.* (1558/9) c 2 (see note in *Statutes of the Realm*). Cf. further the protest of the archbishop of Canterbury in Wilkins, *Conc.* III, 746 and the precedents in Coke, *Inst.* II, 585-87.

[32] National synod of *London*, 1075 (Wilkins, *Concilia* I, 363): *Ex conciliis Eliberitano et Toletano XI; ut nullus episcopus, vel abbas, seu quilibet ex clero, hominem occidendum, vel membris truncandum judicet, vel judicantibus suae auctoritatis favorem commodet.*

Const. Clarendon, 1164, c 11: . . . *sicut barones caeteri debent interesse judiciis curiae domini regis cum baronibus, usque perveniatur in judicio ad diminutionem membrorum vel ad mortem.*

Canones concilii sub Richardo Cantuariensi archiepiscopo habiti (according to Wilkins' assumption: *Westminster*, 1173; Wilkins, *Concilia* I, 474) c 17: *Clerici publicis muneribus non fungantur, nec causas sanguinis agant.*

Council of *Westminster*, 1175 (Wilkins, *Concil.* I, 476): *Ex concilio Toletano III. Hiis qui in sacris ordinibus constituti sunt, judicium sanguinis agitare non licet. Unde prohibemus, ne aut per se membrorum truncationes faciant, aut inferendas judicent* . . .

Council of *Oxford*, 1222 (Wilkins, *Concilia* I, 585) c 8: . . . *ne clerici beneficiati aut in sacris ordinibus constituti, ad villarum procurationes admittantur; viz. ut non sint senescalli aut ballivi talium administrationum. occasione quarum laicis in reddendis ratiociniis obligentur; nec jurisdictiones exerceant seculares, praesertim illas, quibus judicium sanguinis est annexum.*

Constitutions of legate Othobon, 1268 (Wilkins, *Concilia* II, 1) c 6.

Cases in which the bishops did take part in such judgments are collected from 4 & 15 *Ed. III*, 5 *Hen. IV*, 3 & 5 *Hen. V* in Phillimore, *Eccles. Law* 72.

[33] Compare 11 *Ric. II* (1387/8) c 1 petit. 3: the *appelles, pursuites, accusementz, processes, jugementz et execucions* made by that parliament (held after a period of disturbance) were to be valid in spite of the fact that the spiritual peers had absented themselves when the said judgments were given, *por loneste et salvacion de lour estat*; but no precedent was to be drawn therefrom. [By 21 *Ric. II* (1397/8) c 12 all the acts of the parliament of 11 *Ric. II* are declared to be unlawful (but according to the contents of the statute, for other reasons than the non-participation of the prelates). 1 *Hen. IV* (1399) c 3 repeals all the acts of the parliament of 21 *Ric. II*, and c 4 expressly confirms the enactments of the parliament in 11 *Ric. II*. But cf. *Rotuli Parl.* III, 348 touching the parliament of 21 *Ric. II*: . . . *les Communes monstrerent au Roy, Coment devant ces heures pluseurs Juggementz, Ordenances, faitz en temps des progenitours notre*

in respect of the prelates that permanent detachment from the common parliament which prevailed in the case of the inferior clergy was not allowed to take place.

The archbishops and bishops were from the outset, as a general rule, all summoned.[34] But the number of the other prelates (abbots, priors, heads of orders) whose attendance in the upper house was bidden, at first varied largely from time to time.[35] In a case which arose in 1319 (12 *Ed. II*), and after 1341 (15 *Ed. III*) constantly, it was acknowledged that only those who held by barony, and not those who held by frankalmoign, were bound to appear.[36] After that the number gradually became fixed at some twenty-five abbots, two priors and three heads of orders.[37] The higher and lower prelates were thus together more numerous than the temporal peers[38] and could, if they were united, prevent the passing of any

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Seigneur le Roy en Parlement, ount este repellez et adnullez, pur ceo qe l'Estat de Clergie ne feust present en Parlement a la faisaunce des ditz Juggementz et Ordenances. Et pur ceo prierent au Roi, qe . . . les Prelatz et le Clergie ferroient un Procuratour, avec poair sufficeant pur consenter en leur noun as toutz choses et ordenances a justifiers en cest present Parlement.]—In 1641 twelve bishops declared that they had been kept from the house by the menaces of the crowd, and that all proceedings in their absence were void. (Cf. § 7, note 38.) This served as the basis of a charge of high treason against the bishops for having attempted to form a special spiritual estate as a third part of parliament.

[34] According to Stubbs, *Const. Hist.* II, 211 c 15 § 201 omissions were only made when the bishop omitted was in disgrace.—For more as to the form of the summons see Stubbs, *l.c.* III, 404 ff. c 20 § 417.

[35] Cf. Stubbs, *Const. Hist.* II, 211 c 15 § 201; III, 459 f. c 20 § 430. On the summoning of four abbesses to the national assembly of 1306 see *l.c.* III, 454 c 20 § 428.

[36] Gneist, *Verfassungsgesch.* p. 348. For more on the cases of 1319 and 1341 see Parry, *Parliaments* 2nd Ed. p. 83, note *p*, p. 112, note *n*.—On possession in *frankalmoign* see Coke, *Inst.* I, 93 ff. and F. W. Maitland, *Frankalmoign in the 12th and 13th centuries* in *The Law Quarterly Review*, 1891, p. 354. According to Ellis, *Introduction to Domesday* I, 258, possession in this kind did not free from the *trinoda necessitas*. Cf. also the distinctions in Bracton (*Rer. Brit. Scr.* No. 70) I, 112: . . . *est enim libera eleemosina et magis libera eleemosina*, . . . ; I, 216: *Poterit etiam fieri donatio in liberam eleemosynam, sicut ecclesiis cathedralibus, conventualibus, parochialibus, viris religiosis, et quandoque in liberam eleemosynam et perpetuam, et quo casu, non excusatur ille, qui accipit, a praestatione servitii. Si autem fiat donatio in liberam, puram, et perpetuam eleemosynam, excusatur;* IV, 372: . . . *si ecclesiis parochialibus, utrum sit libera vel magis libera, secundum quod data fuerit in dotem tempore dedicationis* (=if at the dedication of the church, then, it would seem, *magis libera*) *vel alio tempore* . . . *Si autem terra data fuerit ecclesiis cathedralibus vel conventualibus* . . . *quamvis hujusmodi terrae dentur in liberam eleemosinam, non solum dantur ecclesiis sed et personis tenendae in baronia*, . . .

[37] Upon occasion 122 abbots and 41 priors of various monasteries were summoned. Frequently during the vacancy of a see the 'Guardians of Spiritualities' were summoned (cf. thereon Stubbs, *Const. Hist.* II, 178, note 2 c 15 § 186; III, 408, note 1 c 20 § 417), as was once (in 31 *Ed. I*) the archbishop of Dublin. Gneist, *Verfassungsgesch.* p. 348. For summons to archbishop of Dublin see *Peers Report*, app. I, 156.

[38] For example, at the meeting of the reformation parliament of 1529 the upper house consisted of 44 temporal and 48 spiritual peers; the number of the latter being made up thus: 2 archbishops, 16 bishops, 2 'guardians of spiritual-

civil enactment. A change in this respect was brought about by the dissolution of the monasteries. As a consequence thereof, within a few years all the lower prelates disappeared from the upper house,[39] and the preponderance of the spirituality among the lords was ended for ever.

During the first revolution the archbishops and bishops also lost their seats by 16 sq. *Car. I* (1640 ff.) c 27.[40] But this act was repealed on the restoration of the monarchy by 13 *Car. II* (1661) st. 1 c 2.[41]

About the same time the relations of the clergy to the lower house of parliament underwent alteration. Probably from a feeling that the church synods were equivalent to parliamentary representation, the clergy had up to this time taken no part in elections to the house of commons. In 1665 grants of taxes to be paid by the clergy ceased to be voted in the convocations, and were made exclusively in parliament.[42] It was perhaps in connexion with this fact that the clergy, about the year named, began without any special enactment to share in electing members to the lower house.[42a] Thus from the end of the seventeenth century that house has been representative both of clergy and laity.

Before this time it had become doubtful whether the clergy were eligible as members of parliament. After the reformation parliament repeatedly pronounced against their eligibility,[43] and theory was on the side of this contention.[44] In agreement herewith 41 *Geo. III* (1801) c 63 enacted 'that no person having been ordained

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ities,' 23 abbots and 2 priors. Amos, *Observations on the Statutes of the Reformation Parliament* p. 3.

[39] In 1539 abbots sat for the last time under Henry VIII in the house of lords. Under Mary and in the first session of Elizabeth's reign there still sat in that house the abbot of Westminster, now restored as a monastery. Gneist, *Verfassungsgesch.* p. 477, note.

[40] Cf. § 7, note 39. As to the time when the priors of the great orders disappeared from parliament, see Stubbs, *Const. Hist.* III, 457 c 20 § 428.

[41] Cf. § 7, note 68.

[42] Compare here § 54, nr. notes 57 ff.

[42a] Observations of Onslow in Burnet, *Hist. of Time* Ed. 1823 ff. I, 340 and IV, 508. That clergymen may vote is assumed in 10 *Ann.* (1711) s 2 and 18 *Geo. II* (1745) c 18 ss 1, 5.

[43] Resolution of a mixed committee of both houses, 21 *Hen. VIII.* Atterbury, *Rights* 72 (after Moor, *Rep.* p. 781). On Oct. 12th, 1553, a committee was appointed by the commons to examine into certain elections. On Oct. 13th, 1553, *it is declared by the Commissioners, that Alex. Nowell, being Prebendary in Westminster, and thereby having voice in the Convocation-house, cannot be a Member of this House; and so agreed by the House; and the Queen's Writ to be directed for another burgess in that place* (*Journal, Commons*). On the election of a clergyman it was resolved, with this and another precedent in view, on the 8th Feb. 1621: *his return void; and a new writ to issue for a new election* (*Journal, Commons*, 8th Feb. 1620). 17th Jan. 1662, on the recommendation of the *Committee of Privileges and Elections* it was resolved *that Dr. Craddock* (being in holy orders) *was a person incapable to be elected, and his election void; and that Mr. Wandesford* (who had obtained the next greatest number of votes) *was duly elected a burgess for the said borough of Rickmond and ought to sit in this house* (*Journal, Commons*, 17th Jan. 1661).

[44] Coke, *Inst.* IV, 47, maintains that no clergyman, even of the lowest degree, is eligible, in that the clergy belong to another body, viz. to convocation. So, on

to the office of priest or deacon, or being a minister of the church of Scotland, is or shall be capable of being elected to serve in parliament as a member of the house of commons.'[45] But by the *Clerical Disabilities Act*, 33 & 34 *Vict.* (1870) c 91, those who relinquish under the terms of this act become eligible.

The *praemunientes*-clause was used, even after the reformation and after the first revolution, in the writs summoning bishops to parliament, in spite of the fact that special representatives of the clergy no longer appeared even as a matter of form. The clause still stands in the writs.[46]

The number of bishops summoned to the upper house was, in and after Edward VI's reign, two archbishops and twenty-four bishops, that is to say, all the bishops of England proper and the principality of Wales.[47] As there were no new sees established until the nineteenth century, that number was not increased ; on the contrary, the relative importance of the spiritual element was diminished. Immediately after the reformation the archbishops and bishops formed about one-third of the house of lords. Then temporal peers began to be multiplied ; so that by the end of the eighteenth century the spirituality commanded but a small minority of votes, and the proportion has since been continuously reduced.[48] On the union of Ireland with England, 39 & 40 *Geo. III* (1800) c 67 gave the archbishops of the established church of Ireland one seat, and its bishops three seats, in the house of lords of the parliament of the united kingdom ; the archbishops and bishops were to sit by rotation of sessions.[49] An increase of episcopal votes in the upper house, such as might have occurred when in the nineteenth century new bishoprics were created, was prevented by the movement against the preference of any church as a state church.[50] In the first act to authorize the establishment of new sees, 6 & 7 *Gul. IV* (1836) c 77, the possibility of any addition to the spiritual peers was obviated by the proposed combination of old dioceses at the same time that new were marked off. It was thus not necessary to break with the principle accepted hitherto, that all the bishops of England and Wales were entitled to a seat in the house of lords. The first infringement of that principle was by 10 & 11 *Vict.* (1847) c 108, which enacted that one of the projected unions of sees was not to take place and that a see of Manchester was nevertheless to be founded. The

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the same ground, Blackstone, 1 *Comm.* 175 and others, whereas Coleridge disputes the soundness of this reason. (See Phillimore, *Eccles. Law* 632, notes *i* ff.)

[45] *An Act to remove doubts respecting the eligibility of persons in holy orders to sit in the house of commons.*

[46] Compare *e.g.* the writ of summons for 1866 printed in Joyce, *Handbook of Convocations*, London, 1887, p. 189.

[47] The bishop of Sodor and Man was not summoned, because Man does not belong to the kingdom of England. Cf. § 33, note 25.

[48] No. of temporal peers at the accession of Geo. I, 181 ; at that of Geo. III, 372 ; now above 500. Gneist, *Verfassungsgesch.* p. 675.

[49] Cf. § 11, note 32.

[50] To exercise pressure on the upper house, frequent proposals were made in the '20s and '30s to exclude the bishops wholly from it.

same act laid down that the number of the lords spiritual was not to be increased by the foundation of the new bishopric; the two archbishops and the bishops of London, Durham and Winchester were always to be summoned; but of the rest only the legal number according to priority of appointment; translation to another see did not destroy the right to be summoned. A similar reservation is repeated in all later acts for the creation of new sees.[51] Lastly, at the disestablishment of the Irish church it was laid down that thenceforth Irish bishops as such had no right to be summoned to the house of lords.[52]

§ 22.

3. HISTORY OF THE CELIBACY OF THE CLERGY.

At the time of the conversion of the Anglo-Saxons, there were already existing in the Christian church, especially in the west, numerous prohibitions, differing in details, of marriage or sexual intercourse on the part of the clergy at least from the diaconate upwards. But these prohibitions had not been strictly carried into effect.[1]

Gregory I, in an instruction to Augustine (601), takes it for granted that those below the grade of a deacon may legally marry.[2] In the centuries after the death of Augustine marriages of the clergy even from the diaconate upwards were tolerated in England as elsewhere in the west.[3] In the seventh and eighth centuries

[51] 10 & 11 *Vict.* (1847) c 108 s 2; *St. Albans Act* 38 & 39 *Vict.* (1875) c 34 s 7; *Truro Act* 39 & 40 *Vict.* (1876) c 54 ss 5, 6; *Bishoprics Act* 41 & 42 *Vict.* (1878) c 68; *Bristol* 47 & 48 *Vict.* (1884) c 66, the case being brought under the *Bishoprics Act* 1878. [52] 32 & 33 *Vict.* (1869) c 42; cf. § 11, note 36.

[1] Richter, *Kirchenrecht* § 116; Hinschius, *Kirchenrecht* I, § 19.

[2] Gregory I's answer to Augustine's first question (Haddan and Stubbs, *Councils* III, 19; also printed in Gratian, *Decret.* I, dist. 32 c 3): . . . *si qui vero sunt clerici extra sacros ordines constituti, qui se continere non possunt, sortiri uxores debent, et stipendia sua exterius accipere.* In canon law *ordines majores* (=*sacri*) and *ordines minores* are distinguished. In the earlier part of the middle ages sub-deacon's orders were reckoned among *ordines minores*. According to the *Decretals* of Gregory IX (*Liber Extra*) I, 14 c 9 they were included by Urban II (1088–99) in *ordines sacri*. Compare Richter, *Kirchenrecht* § 103, note 9. At a later time by *ordines sacri* were understood the higher orders including those of the sub-deacon.

[3] Instances of mention of the wives and children of English bishops, priests and deacons from the seventh to the eleventh century, without any sign that offence was taken at such relations, are collected in Kemble, *The Saxons in England*, Book II c 9 Ed. 1876, II, 444 ff.; two examples from *Domesday-Book* (1086) will be found in Ellis, *Introduction to Domesday*, 1833, I, 342.— Among the Britons the marriage of the clergy was tolerated and long survived, in spite of the fact that the tendency to discountenance it grew by degrees stronger. Passages in support of this statement are to be found in Haddan and Stubbs I, 155. In 961 the priests in the diocese of Llandaff were ordered only to marry with the pope's consent. This led to disturbances, with the effect that the priests were again allowed to marry without restriction. Haddan and

priests and deacons were only forbidden to make a second marriage, or a marriage with a woman marrying for the second time, or with a heathen woman ;[4] they were also forbidden to keep concubines.[5]

It was not until the middle of the tenth century that, favoured by archbishops Odo (941–58) and Dunstan (959–88) of Canterbury, a

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Stubbs I, 285.—For cases of monastic or other church property falling by inheritance to the family of the holder see Stubbs, *Const. Hist.* I, 243 f. c 8 § 84.

[4] Compare, in particular, the following rules :—

Poenitentiale Theodori (probably dating from the time of Theodorus, 668–90; printed in Haddan and Stubbs, *Counc.* III, 173 ff.) :—

Book 1 c 9 *De his qui degraduntur vel ordinari non possunt.*

§ 4 *Si quis presbiter aut diaconus uxorem extraneam duxerit, in conscientia populi, deponatur.*

§ 5 *Si adulterium perpetraverit cum illa et in conscientia devenit populis, projiciatur extra aecclesiam et peniteat inter laicos quamdiu vixerit.*

[In the corresponding passage of the *Poenitentiale Egberti* (its authenticity is tolerably certain and it is to be referred to Egbert, archbishop of York, 732–66 ; printed in Haddan and Stubbs III, 413 ff.) the word *extranea* is, in the form in which the penitential has been transmitted to us, left out. The passage runs :—

c 4 § 7 *Si presbyter vel diaconus vel monachus uxorem duxerit in conscientia populi, deponatur.*

§ 8 *Si adulterium perpetraverit cum ea et in conscientia populi devenerit, proiciatur extra aecclesiam et inter laicis peniteat quamdiu virit.*

Extranea in the extract from *Poen. Theodori* is, it would seem, used in the sense of *gentilis*. The prohibition of marriage with heathen women applied not only to the clergy but to all Christians. Cf. *Poenitentiale Theodori*, Book II c 4 § 11 : *Non licet baptizatis cum caticuminis manducare neque osculum eis dare, quanto magis gentilibus ;* c 12 § 9 . . . *cujus uxor est infidelis et gentilis et non potest converti, dimittatur.* Councils of *Celchyth* and *Pincahala*, 787 (Haddan and Stubbs III, 455) c 15 : *Interdicuntur omnibus injusta connubia, et incaestuosa, tam cum ancillis Dei, vel aliis illicitis personis, quam cum propinquis et consanguineis, vel alienigenis uxoribus ;*

Dialogus Egberti (universally regarded as genuine, 732–66, printed in Haddan and Stubbs, *Counc.* III, 403) :—

c 15 *Interrogatio: Pro quibus criminibus nullus sacerdos potest fieri vel pro quibus jampridem ordinatus deponitur ?*

Responsio: Hujusmodi tunc ordinatio Episcopi, presbiteri, vel diaconi. rata esse dicitur: si nullo gravi facinore probatur infectus; si secundam non habuit [*uxorem*], *nec a marito relictam ; . . .*

[5] *Poenitentiale Theodori* (Haddan and Stubbs, *Councils* III, 173 ff.), Book I c 9 § 6 : *Si quis concubinam habet, non debet ordinari.*

To others than the clergy the church allowed at this time and later allowed the keeping of either a wife or a concubine. *Can. poenitent. sub Edgar rege* (a compilation of the tenth century from earlier penitential books ; whether king Edgar had any connexion with it is not known) c 19. *Knut* (1017–1037) II c 54. Compare also Freeman, *Hist. of Norman Conquest* 3rd Ed. I, 624 ff. appendix X. (Only a *legitimum connubium* is allowed by the council of Herutford, 673, c 10 ; printed in Haddan and Stubbs III, 118. Similarly *Institutes of Polity* c 23 ; printed in note 6.)

The boundary line between marriage proper and the keeping of a concubine was not yet strictly drawn in ecclesiastical law, because, whilst the blessing of a priest on the union was desired, it was not as yet regarded as a condition of validity. On priestly blessing of marriage see : *Poenitentiale Theodori*, Book I c 14 § 1 : *In primo conjugio presbiter debet missam agere et benedicere ambos* . . . — *Be wifmannes beweddunge* (of the marriage of a woman), printed in Schmid, *Ges. d. Angelsachsen*, append. VI. The treatise is of ancient date ; the MSS. attach it to the laws of Aethelstan (924 [925]–40) or Eadmund (940–946). In it an account is given of the whole procedure on

stricter school of thought arose, the followers of which aimed at compelling the celibacy of the clergy in the higher orders. Connected therewith was the endeavour to substitute monks for the secular canons of the chapters, which met, however, with only partial success. To this time belong the first civil and ecclesiastical laws in England, which recommended celibacy to mass-priests and deacons —sometimes to all 'servants of the altar.'[6] To priests and deacons

occasion of a marriage. s 8 runs: *Aet þâm giftan sceal maesse-preôst beôn mid rihte, se sceal mid Godes blêtsunge heora gesomnunge gederian an ealre gesundfulnesse.* ("At the giving [of the bride] rightly there shall be a mass-priest; he shall with God's blessing bind their union to all prosperity.") Letter of Aelfric to bishop Wulfsin (the so-called *canones Aelfrici*, 992–1001; printed in Thorpe [Record Commission] *Ancient Laws* etc. 441 ff. c 9): . . . *Se laeweda mot swa-þeah, be þaes apostoles leafe, oðre siðe wifigan, gyf his wif him aetfylð, ac þa cánones forbeodað þa bletsunga þaer-to, and gesetton dáedbóte swylcum mannum to donne.* ("The layman may, however, with the apostle's leave take a wife a second time, if his wife falls away from him; but the canons forbid blessing thereto and have ordered such men to do penance.") —Report of the council of Winchester, 1st April, 1076, Parker, *De Antiquitate Britannicae Ecclesiae* etc. Lambeth, 1572, p. 98: *ex lib. Constitutionum Ecclesiae Wigorn.* p. 101; printed also in Wilkins, *Concilia* I, 367: *Praeterea statutum est, ut nullus filiam suam vel cognatam det alicui absque benedictione sacerdotali. Si aliter fecerit, non ut legitimum coniugium sed ut fornicatorium iudicabitur.*—Council of London, 1102 (Wilkins I, 382) c 23: *Ut fides inter virum et mulierem, occulte et sine testibus, de conjugio data, si ab alterutro negata fuerit, irrita habeatur.* On the gradual introduction of priestly co-operation in the conclusion of marriages in England and Scotland see Friedberg, *Das Recht der Eheschliessung*, Leipzig, 1865, pp. 33 ff., 309 ff.— In regard to Ireland see, for example, Benedict (*Rer. Brit. Scr.* No. 49) I, 28: . . . *Praeterea praeceperunt in eodem concilio* (that of Cashel, 1171, after the partial conquest of the country by the English) *ut laici qui uxores habere vellent, eas sibi copularent jure ecclesiastico. Plerique enim illorum quot volebant uxores habebant, et etiam cognatas suas germanas habere solebant sibi uxores.*

[6] *Edmund* (940–46) 1 c 1: *Be gehâdedra manna claênisse. þaet is aêrest, þaet þâ hâlgan hâdas . . . heora claênesse healdan be heora hâde, swâ werhâdes swâ wif-hâdes.* ("Of the purity of the clergy. This is the first [thing], that those holy orders . . . hold their chastity according to their degree, men and women alike); if they do not so, then are they worthy of that which the canon ordains, that is, that they forfeit their worldly possessions and a consecrated burial place, unless they do penance." *can. sub Edgar.* (959–75) *rege*, c 8: *And we laeraþ, þaet aenig preost silfwilles ne forlaete ðа circan, ðe he to gebletsod waes, ac haebbe him ða to riht aewe.* ("And we teach that no priest should willingly leave the church, to which he was consecrated; but should have her for his true wife.") c 60: *And we laeraþ, þaet aenig preost ne lufige wifmanna neawyste ealles to swiþe, ac lufige his riht aewe, þaet is his cirice.* ("And we teach that no priest should love the proximity (*Beischlaf*) of women too much; but should love his true wife, that is his church.") *can. poenitent. sub Edgar.* (penitential perhaps from the tenth century, merely repeats earlier provisions, mostly of Frankish origin) c 30: *Gifmae sse-preost oþþe munuc haemed ðinge drihþ oþþe aewebryceþ, faeste X gear and reowsige aefre. Diacon VII, cleric VI, laewdeman V, swa be manslihte.* ("If a mass-priest or monk commits fornication or adultery, let him fast for ten years and repent always; let a deacon fast for seven years, a *clericus* for six, a layman for five, as in the case of homicide") [*haemed* = *Beischlaf*, is, as a rule, employed in the sense of unlawful *Beischlaf*; *unriht-haemed* appears to designate not merely *Beischlaf* of the unmarried; but *Beischlaf* which is for special reasons unlawful; *riht-haemed* = marriage. Schmid, *Ges. d. Angelsachsen*; Glossary s. v. *haemed*]. c 31: *Gif maesse-preost oþþe munuc oþþe diacon riht wif haefde, aer he gehadod waere, and hi*

who observe the prohibition is promised as a reward equality in the eye of law with the thegn; whilst those who transgress it are

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forlaete, and to hade fencge, and siþþan ðurh haemed ðingc hi eft underfenge, faeste heora aelc swa be manslihte, and reowsian swiþe. ("If a mass-priest or monk or deacon has had a wife before he was consecrated and leaves her and receives consecration, then takes her again for *Beischlaf*, let each of them fast as in case of homicide and repent sorely.") According to Stubbs, Introduction to *Memorials of Dunstan* (*Rer. Brit. Scr.* No. 63) p. cvii, note 2, this canon is taken from the fourth book of the Pseudo-Egbertine penitentials, which again is from the Pseudo-Theodore, which takes it from the *Poenitentiale Romanum*, published by Halitgar of Cambray; there it is taken from the penitential of Columbanus and the earlier writers. *Aethelred* V (ordinance of 1008) c 9: *Ful georne hî witan, þaet hî nâgan mid rihte þurh haêmed-þing wîfes gemânan.* ("Full well they [the mass-priests] know that they have not with right through concubinage (*Beischlaf*) intercourse with a woman [wîf=*mulier* or *uxor*]), and let him who will abstain from this, and preserve his chastity, have God's mercy; and in addition thereto, for worldly honour, that he be worthy of thane-'wer' and thane-right . . .; and he who will not that which is befitting his order, let his honour wane before God and before the world." [*Aethelred* VI (Council of *Ensham*, 1006–11, perhaps only a revision of the ordinance of 1008) c 5, as above, but applied to 'all God's servants, and priests above all,' and without any promise of the rights of a thegn.] Similarly *Aethelred* VIII (1014) cc 28–30 [here the prohibition is—it is not seemly for the servant of the altar *nân þinge ne tô wife ne to worold-wîge*] and *Knut* (1017–37) I c 6 pr. and § 2.

For private sources wherein similar admonitions are contained are to be compared:—

Letter of Aelfric to bishop Wulfsin (the so-called *canones Aelfrici*, 992–1001, printed in Thorpe's *Ancient Laws* etc. pp. 441 ff.) cc 5, 6, 17.

Letter of Aelfric to archbishop Wulstan, agreeing to a great extent with the preceding (in Thorpe, *l.c.* p. 452) cc 9 ff., cc 31 ff., 43.—c 33 runs: *L. we ne magon eow nu neadunga nydan to claennesse, ac we myngiað eow swa ðeah, þaet ge claennesse healdan* . . . ("Beloved we cannot now forcibly compel you to chastity, but we admonish you, nevertheless, that ye observe chasity.")

Ecclesiastical Institutes (Thorpe, *l.c.* pp. 466 ff.) c 12.

Institutes of Polity (an Anglo-Saxon treatise, printed in Thorpe [*Record Commission*], *Monumenta Ecclesiastica*) c 23: *Be gehadodum Mannum.* (Of the clergy) . . . *þaet syndon þa aew-brecan, þe þurh healicne had ciric-aêwe underfengan, and syððan þaet abraecan. Nis nanum weofod þene alyfed þaet he wifian mote, ac is aelcum forboden, nu is þeah þaera ealles to fela þe þone aew-bryce wyrcað and geworht habbað* . . . *Laewedum men is aelc wif forboden, butan his riht aêwe* . . . *Ciric is sacerdes aewe.* ("Those are the adulterers who, through holy orders, have entered into an ecclesiastical marriage, and afterwards broken it. To no minister of the altar is it allowed to marry, but it is forbidden to every one (*i.e.* every minister); yet there are now altogether too many who commit and have committed adultery. . . . To a layman every woman is forbidden, except his lawful wife. . . . The church is a priest's spouse.")

Compare further the *Instituta Knuti* (Schmid, appendix XX; a law-book, probably written shortly after 1110) III c 63: . . . *clericus, qui discendo tantum profecerat, ut ordines haberet et in castitate Christo serviret, is tunc judicabitur libertatem habere debere* . . . [In the Anglo-Saxon treatise *Be leôd-geþinðum and lage* (Schmid, append. V) c 7, whence the preceding is translated, the words corresponding to *in castitate* are wanting]; *Leges Henrici I* (a law-book; probably written 1110–18) c 57 § 9 (printed below, § 60, note 24).

In connexion with the concession of the rights of a thegn are to be placed the regulations which assure to those mass-priests and deacons who live according to rule greater credibility in a lawsuit than those who do not. *Aethelred* VIII cc 19–21; *Knut* I c 5.

threatened with the imposition of ecclesiastical penances, not, however, with loss of office.[7] Moreover there is found a regulation, probably dating from the same time, which assumes the permanent cohabitation of a priest and a woman (wife) to have been allowed in Northumbria.[8]

About the time of the conquest the movement against marriages

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[7] The contrary is often maintained on the ground of a report (in Wilkins I, 27) of a council alleged to have been held in 712 or 714 by archbishop Brithwald, at which resolutions were passed *de abdicandis sacerdotum uxoribus*; and on the ground of a report (in Mansi XIX, 15) of a national council in 969 in the reign of king Edgar. The report of this council of 712 (714) is based on forged papal bulls and on late arbitrary additions to documents (Haddan and Stubbs III, 280, note). The account of the assembly of 969 is taken from the *Vita St. Oswaldi*, printed in *Historians of the Church of York* (*Rer. Brit. Scr.* No. 71) II, 505 and mentioned by Hardy, *Descriptive Catalogue of Materials etc.* (*Rer. Brit. Scr.* No. 26) vol. I No. 1207, cc 6, 7: . . . *Non multo vero post, comite Ailwino amplas possessiones concedente, S. Oswaldus infra quinquennium aedificavit insigne ibidem monasterium, et anno Domini* 974 *solemniter dedicavit, Ednothum monachum abbatem constituit. Per idem tempus auctoritate Joannis papae Dunstanus archiepiscopus, coacto generali concilio, statuit et decreto firmavit, ut canonici omnes, presbyteri, diaconi, subdiaconi aut caste viverent, aut ecclesias quas tenebant dimitterent. Habebat autem regem Edgarum in hoc negotio fidelem adjutorem, et firmum defensorem. Hujus enim decreti executio Oswaldo Wigorniensi episcopo, et Ethelwoldo Wintoniensi episcopo commissa est.* . . . According to Hardy, *l.c.* this *Vita*, the author of which is unknown and which forms part of the collection attributed to John of Tynemouth (as to this collection see Hardy I, 20, note), is based probably on Eadmer's *Vita St. Oswaldi.*

Eadmer in his *Vita St. Oswaldi* c 17 (printed in *The Historians of the Church of York; Rer. Brit. Scr.* No. 71; II, 20), as also, borrowing from Eadmer a second, anonymous, *Vita St. Oswaldi* c 7 (in *Historians York, l.c.* II, 493, Hardy, *l.c.* vol. I No. 1210) reports: *Per idem temporis, ex sanctione et auctoritate Johannis Apostolicae sedis antistitis, Beatus Dunstanus archiepiscopus Cantuariae et primas totius Britanniae, cujus paulo superius mentionem fecimus, coacto generali concilio statuit, et statuendo decretum confirmavit; videlicet ut canonici omnes, diaconi et subdiaconi omnes aut caste viverent, aut ecclesias quas tenebant una cum rebus ad eas pertinentibus perderent. Habebat autem regem Edgarum in hoc negotio fidelem fautorem, constantem adjutorem, firmum defensorem. Qui rex, ipsius patris consilio utens, curam exequendi decreti hujus super totum regnum duobus viris injunxit, Oswaldo scilicet episcopo Wigorniensi et Aethelwaldo Wintoniensi.* This report of Eadmer is incredible, if only from the mention of the sub-deacons (cf. above, note 2). No such account is found either in the contemporary *Vita St. Oswaldi* (*l.c.* I, 392 ff.), or in the biographies of Dunstan by his contemporaries and by Eadmer (in *Memorials of St. Dunstan; Rer. Brit. Scr.* No. 63). Most nearly resembling it is the statement of Eadmer in *Vita St. Dunstani* (*Memorials etc. l.c.* 211): . . . *Ordo clericalis ea tempestate plurimum erat corruptus, et canonici cum presbyteris plebium voluptatibus carnis plus aequo inserviebant. Quod malum Dunstanus corrigere cupiens, fretus* (this word is wanting in one MS.) *auctoritate Johannis apostolicae sedis antistitis, apud regem obtinuit quatenus canonici qui caste vivere nollent ecclesiis quas tenebant depellerentur, et monachi loco eorum intromitterentur. Praesidebat ea tempestate Wentanae ecclesiae praesul Aethelwoldus,* . . .

Cf. below, note 13, for a report of the same tendency, likewise it would seem incorrect, of the resolutions of 1108 c 5 by Eadmer.

[8] *Norðhymbra preôsta lagu* (time of origin not precisely known; according to the common view, end of tenth century; Schmid, appendix II) c 33: *Gif preôst cwênan forlaête*, and *oðre nime, anathema sit.* ("If a priest forsake wife [or woman] and take another, *anathema sit.*")

of the clergy received a new impetus from the exertions of Gregory VII (pope from 1073 to 1086), and the resolutions of Roman councils, particularly those of 1059 [9] and 1074.[10]

In England it was, at first, only decided—at the council of Winchester (1076) under archbishop Lanfranc—that members of the chapter clergy might not be married; that priests in other positions might not for the future marry; but, if they had wives already, need not put them away.[11] Very soon, however, there came a long series of resolutions by other councils, forbidding absolutely, upon pain of loss of office, the keeping of wives even by those who held the lower places in the church. That a more determined effort was now being made to execute the prohibitions is shown by the more precise and definite language in which they are couched. The injunction was no longer directed indiscriminately sometimes to the mass-priest, sometimes to priest and deacon and sometimes to all ministers of the altar; but almost always definitely, to all clergy in sub-deacon's orders[12] or in orders above them, or in possession of a benefice. Further, the command was not, now to observe celibacy, now to remain chaste, the same legal consequences following transgression of either kind; but from the end of the twelfth century onward the cases are clearly distinguished: loss of office is the penalty only for a breach of the prohibition to marry, not for other sexual intercourse with women, unless indeed such intercourse by its duration and publicity or by other characteristics should assume the appearance of a breach of the injunction to celibacy.[13] The often-repeated pro-

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[9] Mansi, *Concilia* XIX, 898.

[10] Mansi, *Concilia* XX, 402 ff. 434.

[11] Matthew Parker, *De Antiquitate Britannicae Ecclesiae et Privilegiis Ecclesiae Cantuariensis, cum Archiepiscopis eiusdem* 70. Lambeth, 1572, p. 98: *Ex lib. Constitutionum Ecclesiae Wigorn. p.* 101 (after Parker, also printed in Wilkins, *Concilia* I, 367): *Sexto anno celebratur Concilium apud Winton. in haec verba. Anno ab incarnatione Domini* 1076 *indictione* 14 . . . *in kalend. Aprilis habita est Synodus Wintoniae convocata ab eodem Cant. Ecclesiae Primate. . . . Decretumque est ut nullus Canonicus uxorem habeat. Sacerdotum* (Wilkins: *sacerdotes*) *vero in castellis vel in vicis habitantium* (Wilkins: *habitantes*) *habentes uxores non cogantur ut dimittant, non habentes interdicantur ut habeant, et deinceps caveant Episcopi, ut sacerdotes vel diaconos non praesumant ordinare, nisi prius profiteantur, ut uxores non habeant. . . .* Cf. letter of Lanfranc to bishop Herfast of Norwich in *Epistola Lanfranci* (Migne, *Patrologiae Cursus* vol. 150 p. 526 No. 21.—Ed. of Giles, p. 46 No. 24).—Urban II enjoined his legate in 1095 to make representations to William II *de fornicatione clericorum.* Hugo of Flavigny, year 1096, printed in § 4, note 17.

[12] About this time the subdiaconate began to be reckoned one of the higher orders. Compare note 2.

[13] Compare from this period of transition the following illustrative passages:—

Council of *London*, 1102 (Wilkins, *Concilia* I, 382) c 5: *Ut nullus archidiaconus, presbyter, diaconus canonicus uxorem ducat, vel ductam retineat. Subdiaconus vero quilibet, qui canonicus non est, si post professionem castitatis uxorem duxerit, eadem regula constringatur.* c 6: *Ut presbyter quamdiu illicitam conversationem mulieris habuerit, non sit legalis, nec missam celebret; nec si celebraverit, ejus missa audiatur.* c 7: *Ut nullus ad subdiaconatum, aut supra, ordinetur sine professione castitatis.* Henry of Huntingdon (*Rer. Brit.*

vision that the son of a priest could not succeed his father in the possession of a benefice was also aimed against the marriages of

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Scr. No. 74) 234: . . . *tenuit Anselmus archiepiscopus concilium apud Londoniam, in quo prohibuit sacerdotibus uxores Anglorum, antea non prohibitas.*

[Cf. here Eadmer, *Hist. Nov.; Rer. Brit. Scr.* No. 81; p. 193: *Multi nempe presbyterorum statuta concilii Lundoniensis, necne vindictam quam in eos rex exercuerat . . . postponentes, suas feminas retinebant, aut certe duxerant quas prius non habebant.*]

Resolution of the bishops assembled for the *curia regis* at London, Whitsuntide 1108, *in presentia . . . regis Henrici, assensu omnium baronum suorum* (contained [with an allegation that these resolutions were made at Winchester and with the erroneous statement that archbishop Gerard of York was present] in the law-book *Quadripartitus* Book II c 18, whence it is here printed; other versions in Florentius Wigorniensis, *Chron.* II, 57 and Eadmer, *Hist. Nov.* 194) c 1: *Statutum est, ut presbyteri, diaconi, subdiaconi caste vivant et foeminas in domibus suis non habeant preter proxima consanguinitate sibi iunctas secundum hoc quod sancta Nicena sinodus definivit.* c 5: *Illi autem presbiteri, qui . . . preelegerint cum uxoribus suis* [Florentius and Eadmer have *mulieribus* instead of *uxoribus suis*] *habitare, a divino officio remoti* [Florentius and Eadmer add: *omnique ecclesiastico beneficio privati*] *extra chorum ponantur, infames pronunciati.* [Eadmer, not Florentius, adds: c 10: *Omnia vero mobilia lapsorum posthac presbyterorum, diaconorum, subdiaconorum, et canonicorum tradentur episcopis, et concubinae cum rebus suis, velut adulterae.*]

Council of *London* of 9th Sept. 1125, under the legate, John of Crema (Wilkins, *Concilia* I, 408) c 13: *Presbyteris, diaconibus, subdiaconibus, canonicis uxorum, concubinarum, et omnium omnino foeminarum contubernia auctoritate apostolica inhibemus, praeter matrem, aut sororem, vel amitam, sive illas mulieres, quae omnino careant suspicione. Qui decreti hujus violator extiterit confessus vel convictus, ruinam proprii ordinis patiatur.*

National council of *Westminster*, 1127 (Wilkins, *Concilia* I, 410) c 5: *Presbyteris, diaconibus, subdiaconibus et omnibus canonicis contubernia mulierum illicitarum penitus interdicimus. Quodsi concubinis (quod absit) vel conjugibus adhaeserint, ecclesiastico priventur ordine, honore simul, et beneficio. Presbyteros vero parochiales (si qui tales fuerint) extra chorum ejicimus, et infames esse decernimus.* c 7 relates to the punishment of priests' concubines.

Council of *London*, 1129 (Henry of Huntingdon; *Rer. Brit. Scr.* No. 74; Book VII § 40 p. 250): *Rex . . . in Angliam rediit. Tenuit igitur concilium maximum ad Kalendas Augusti apud Londoniam, de uxoribus sacerdotum prohibendis. Intererant . . .* (here follow the names of two archbishops and ten bishops) . . . *Verum rex decepit eos simplicitate Willelmi archiepiscopi. Concesserunt namque regi justitiam de uxoribus sacerdotum, et improuidi habiti sunt, quod postea patuit, cum res summo dedecore terminata est. Accepit enim rex pecuniam infinitam de presbyteris, et redemit eos.*

Legatine council of *Westminster*, 1138 (Wilkins, *Concilia* I, 415) c 8: *Sanctorum patrum vestigiis inhaerentes, presbyteros, diaconos, subdiaconos uxoratos, aut concubinarios ecclesiasticis officiis et beneficiis privamus . . .*

Canones concilii sub Richardo, archiep. Cant. (*Westminster*, 1173? Wilkins, *Concilia* I, 474) c 3: *Clerici focarias non habeant.* c 4: *Conjugati ecclesias non habeant, seu ecclesiastica beneficia.*

Council of *Westminster*, 1175 (Wilkins, *Concilia* I, 476): *Ex decretali epistola Alexandri papae III ad Rogerum, Wigorn. episcopum. Siquis sacerdos vel clericus in sacris ordinibus constitutus ecclesiam vel ecclesiasticum beneficium habens, publice fornicariam habeat, et semel, secundo, et tertio commonitus, fornicariam suam non dimiserit . . . , omni officio et beneficio ecclesiastico spolietur. Si qui vero infra subdiaconatum constituti matrimonia contraxerint, ab uxoribus suis, nisi de communi consensu ad religionem transire voluerint,*

priests.[14] The enforcement of the prohibition to marry was operative from the end of the twelfth century; on the other hand, the

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et ibi in Dei servitio vigilanter permanere, nullatenus separentur; sed cum uxoribus viventes, ecclesiastica beneficia nullo modo percipiant. Qui autem in subdiaconatu, vel supra, ad matrimonia convolaverint, mulieres etiam invitas et renitentes relinquant.

When Innocent placed the country under an interdict, John seized the women of the clergy and exacted heavy ransom for their release. Roger de Wendover, *Flores Historiarum* (*Rer. Brit. Scr.* No. 84) II, 47, year 1208: . . . *presbyterorum et clericorum focariae per totam Angliam a ministris regis captae sunt et graviter ad se redimendum compulsae;* . . .

Council of *Oxford*, 1222 (Wilkins, *Concilia* I, 585) c 28: . . . *ne clerici beneficiati vel in sacris ordinibus constituti, in hospitiis suis publice concubinas tenere praesumant, nec alibi, cum scandalo publicum accessum habeant ad easdem. Et si forte concubinae eorum, commonitione publice proposita, ab eisdem non recesserint, ab ecclesia Dei, quam infamare praesumunt, expellantur, nec admittantur ad ecclesiastica sacramenta* . . . *Ipsos etiam clericos per subtractionem officii et beneficii* . . . *volumus coerceri.*

Council of *London*, 1225 (Wilkins I, 607): *Concubinae sacerdotum et clericorum, qui infra sacros ordines constituti et beneficiati sunt, ecclesiastica careant sepultura* . . . *Item non recipiantur ad osculum pacis, nec panem benedictum percipiant in ecclesia, quamdiu concubinarii eas detinent in domibus suis vel publice extra domos* . . .

Constitution of the archbishop of Canterbury *Edmund*, 1236 (Wilkins I, 635) c 3: . . . *in generali concilio statutum est, quod clerici, praesertim in sacris ordinibus constituti, qui deprehensi fuerint incontinentiae vitio laborare, et pro hac causa suspensi, officium suum exequi praesumpserint; non solum ecclesiasticis beneficiis spolientur, verum etiam pro hac duplici culpa perpetuo deponantur;* . . . c 4: *Concubinae sacerdotum frequenter moneantur* . . . , *ut vel matrimonium contrahant, vel ut claustrum ingrediantur, vel, sicut publice peccaverunt, publice agant poenitentiam* . . .

Constitution of legate *Otho*, 1237 (Wilkins, *Concilia* I, 649) c 15: *De uxoratis a beneficiis amovendis.* c 16: *De concubinis clericorum removendis* . . . *statuimus* . . . , *ut nisi clerici et maxime in sacris ordinibus constituti, qui in domibus suis vel alienis detinent publice concubinas, eas a se prorsus removeant infra mensem, ipsas vel alias de caetero nullatenus detenturi, ab officio et beneficio sint suspensi, ita quod usquequo super hoc digne satisfecerint, de beneficiis ecclesiasticis se nullatenus intromittant; alioquin ipso jure ipsos decernimus ipsis fore privatos.*

Episcopal constitution of *Worcester*, 1240 (Wilkins, *Concil.* I, 672). The archdeacons are to make inquest, . . . *an aliqui eorum (clerici beneficiati) fuerint uxorati, vel concubinas publice tenuerint in domibus suis, vel alibi,* . . .

Constitution of legate *Othobon*, 1268 (Wilkins, *Concilia* II, 1) c 8 confirms Otho's constitution cited above, and adds provisions against such concubines and persons who harbour them.

[14] Council of *London*, 1102 (Wilkins, *Concilia* I, 382) c 8: *Ut filii presbyterorum non sint haeredes ecclesiarum patrum suorum.*

Pope Paschal II, however, gave Anselm by letter of 30th May, 1107 (in Eadmer, *Hist. Nov.*; *Rer. Brit. Scr.* No. 81; 185) the right of dispensation in regard to this prohibition, *quia in Anglorum regno tanta hujusmodi plenitudo est, ut major pene et melior clericorum pars in hac specie censeatur.*

Legatine council of *London*, 1126 (Wilkins, *Concilia* I, 408): *Sancimus praeterea, ne quis ecclesiam sibi sive praebendam paterna vendicet haereditate,* . . .

Similarly legatine council of *Westminster*, 1138 c 6 (Wilkins, *Concilia* I. 415).

Canones sub Richardo archiep. Cantuar. (Council of *Westminster*, 1173? Wilkins I, 474) c 5: *Filii non succedant patribus in ecclesiis.*

Council of *Westminster*, 1175 (Wilkins, *Concilia* I, 476): *Ex decretali epistola Alexandri papae III ad Rogerum, Wigorn. episcopum.*— . . . *Decre-*

rules against the maintenance of a concubine by the parochial or chapter clergy were never really effective.[15] In a council of the southern province held at London in 1414, the prohibition to marry was extended to all who exercised any sort of ecclesiastical jurisdiction, and laymen were wholly excluded from participation in such functions.[16]

The reformation at first brought with it no change in these regulations. It is true that, under the influence of the new doctrines, some of the clergy married. But this caused Henry to issue several proclamations against such marriages, and even to threaten to visit the offenders with sharper penalties.[17] The persistency with which

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vimus etiam, ejusdem epistolae auctoritate, ne filii sacerdotum in paternis ecclesiis amodo personae instituantur, nec eas qualibet occasione media non intercedente persona, obtineant.

Decrees of Alexander III on this subject to English archbishops and bishops in *Decret. Gregor. IX*, lib. I tit. 17 cc 2–11.

Constitution of *Otho*, 1237 (Wilkins, *Concilia* I, 649) c 15: . . . *Ipsi quoque filii* (of holders of benefices by secret marriages) *ad ecclesias et ecclesiastica beneficia et ecclesiasticos ordines, velut inhabiles, nullatenus admittantur, nisi fuerit cum eis, exigentibus eorum meritis, canonice dispensatum per Romanum pontificem.* c 17: *Licet . . . in eis* (sc. *beneficiis*) *etiam sit interdicta successio sobolis bene natae; quidam tamen de nefario coitu procreati . . . in beneficia hujusmodi, quae patres eorum nullo medio tenuerunt, irrumpere . . . non formidant. Hoc . . . prohibemus . . .*

Constitution of *Peckham* published at the council of *Lambeth*, 1281 (Wilkins, *Concilia* II, 51) c 25: *Cum a jure sit inhibitum, ne absque dispensatione apostolica praeficiantur filii presbyterorum aut rectorum in ecclesiis, in quibus patres eorum immediate seu proximo ministrarunt, et constet ipsa beneficia vacare, si contrarium de facto fuerit attemptatum; praecipimus, ut praelati de ecclesiis sic vacantibus diligenter inquirant, et juxta juris exigentiam de eis non differant ordinare, cautius praecaventes de caetero, ut tales ad hujusmodi beneficia nullo titulo admittant, . . .*

[15] According to Stubbs, *Const. Hist.* III, 385 c 19 § 406 many bishops in the twelfth century were, if not married, yet heads of half legitimate families; whilst in the following centuries until towards the end of the middle ages this was only exceptionally the case with the higher clergy in England.

[16] Wilkins, *Concilia* III, 369. . . . *quod nullus laicus vel clericus conjugatus, sive bigamus, . . . de caetero jurisdictionem spiritualem exerceat qualemcunque, nec in causis correctionum, scilicet cum ad correctionem animae, vel ubi ex judicis proceditur officio, scriba seu registrarius, aut registri correctionum hujusmodi custos quomodolibet existat; . . .*

[17] Proclamation of beginning of 1535 (Wilkins, *Concilia* I, 776): *Finally, his majestie understanding, that a few number of this his realme being priests, as well religious as other, have taken wives, and marryed themselves, . . . ; his highness in no wise minding, that the generalitie of the clergy of this his realme should . . . proceed to marriage, without a common consent of his highness and the realme; doth . . . command as well all and singular of the said priests as have attempted marriages, as all such as will hereafter presumptuously proceed in the same, that they nor any of them shall minister any sacrament or other ministry mysticall, nor have any office, dignity, cure, privilege, profitt or commoditye heretofore accustumed, and belonging to the clergie of this realme, but shall utterly after such marriages be expelled and deprived from the same, and be had and reputed as lay persons, to all purposes and intents. And that such, as shall after this proclamation . . . take wives, and be married, shall run in his grace's indignation, and suffer further punishment and imprisonment at his grace's will and pleasure.—*

the king clung to the celibacy of the clergy was one of the chief reasons why the negotiations then in progress for union with the German protestants proved abortive.[18] In 1539 the doctrine that priests may not marry was laid down by the six article law, 31 *Hen. VIII* c 14, as fundamental and secured by heavy penalties against attack or violation.[19] In spite of all which, the king allowed Cranmer, who had married, to keep his wife.

The influence of Cranmer brought it about that the penalties threatened in the six article law were, in so far as they were applicable to the intercourse of a priest with his former wife and the maintenance of concubines by priests, somewhat modified by 32 *Hen. VIII* (1540) c 10.[20] A later act, 37 *Hen. VIII* (1545) c 17, declared that ecclesiastical prohibitions against the exercise of ecclesiastical juris-

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Similarly proclamations of 16th November, 1538 (Strype, *Cranmer* Ed. 1812 I, 98) and of 1539 (Wilkins III, 847). The proclamations had the force of law, as can be seen from 31 *Hen. VIII* (1539) c 8 [*An Acte that Proclamacions made by the King shall be obeyed*].

[18] Perry, *Hist. of Engl. Ch.* II, 156 c 9 §§ 24 ff.

[19] The following are the provisions relevant here :—

s 1. The doctrine is laid down (article III) that priests after the order of priesthood received may not marry.

s 2. Any person who shall preach, teach, affirm or, when called before a judge, stubbornly maintain the contrary, as also any priest who marries thereafter is to be punished as a felon with death and forfeiture of property.

s 3. Any person who, otherwise than as specified in s 2, shall 'publishe, declare or holde opynion' that the marriage of priests is permissible, is to be punished by forfeiture of goods and chattels, loss of ecclesiastical or other office and of profits from land etc. for life; in case of relapse, by death and forfeiture as a felon.

s 4. The marriages of priests already made are void, and the ordinaries are to 'make separation and divorces of the said marriages and contracts.'

s 5. A priest and his former wife who should thereafter have intercourse or open converse together are to be punished as felons and their property confiscated.

s 20. If any priest *doe carnally use and accustome any Woman or kepe her as his Concubyne, as by paying for her bourde maynteyning her with money array or any other giftes or meanes*, he forfeits his goods and chattels, as also his ecclesiastical offices and benefices, and is to be imprisoned during the king's pleasure.

s 21. Penalties also fall on the concubine.

The act contains in like manner provisions against breach of vows of chastity or widowhood, unless they are made before twenty-one years of age and under pressure.

31 *Hen. VIII* (1539) c 6 § 2 forbids the marriage of members of dissolved monasteries who are priests, or who have taken the vows without compulsion when at least twenty-one years of age.

[20] *An Acte for moderacion of Incontinence for Pristes.* It only amends the penal provisions of ss 5, 20, 21 of the six article law.—That law was amended, in a minor point touching procedure, by 32 *Hen. VIII* (1540) c 15; in other respects it was confirmed by 34 & 35 *Hen. VIII* (1542/3) c 1 § 21 and by 35 *Hen. VIII* c 5; the last enactment, however, mitigated the procedure in favour of the accused and fixed a short limit of time within which indictment must be.—The assumption of Perry, *Hist. of Engl. Ch.* II, 173 c 10 § 22, that the six article law was intended to be modified by 34 & 35 *Hen. VIII* c 1 is hardly justified; on the contrary, the latter act refers only to the denial of other doctrines, less fundamental than the six articles.

diction by laymen and married men were to be regarded as abolished,[21] as being in breach of the king's prerogative.

It was not until Edward VI's reign that the reformation carried the day in regard to the marriage of priests. 1 *Ed. VI* (1547) c 12 repealed the six article law. On the 17th of December, 1547, the lower house of the convocation of Canterbury passed a resolution praying that all provisions against clerical marriages might be set aside and all vows of chastity pronounced void.[22] A bill, however, based on this resolution, failed at first owing to opposition among the lords. Next year 2 & 3 *Ed. VI* (1548) c 21 was carried, an act which, while sweeping away, owing to the great inconveniences involved, all civil and ecclesiastical laws against the marriage of priests, contained an expression of belief that a celibate priesthood was to be preferred.[23] A later statute 5 & 6 *Ed. VI* (1551/2) c 12 explained this as meaning not simply that the marriages in question were exempt from punishment, but that they were good and lawful marriages, the offspring of which were legitimate and could inherit in the usual way, and that priests might be tenants by courtesy on the death of their wives, and wives endowable of their lands.[24] During the reign of Edward VI the second English archbishop, Holgate of York, also entered the marriage state.

Both 2 & 3 *Ed. VI* c 21 and 5 & 6 *Ed. VI* c 12 were repealed by 1 *Mar.* st. 2 (1553) c 2,[25] and a royal ordinance of 1554 prescribed, as of old, the celibacy of the priests as the condition of their remaining in office.[26]

Elizabeth did not at once undo completely the measures of her predecessor. The enactments of Edward VI were not revived. But one of the queen's 'injunctions' of 1559 allowed a priest or deacon to

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[21] Cf. § 4, note 117. 37 *Hen. VIII* c 17 was repealed by 1 & 2 *Phil. & Mar.* (1554 & 1554/5) c 8 § 6, revived, so far as not repealed under Edward VI, by 1 *Eliz.* (1558/9) c 1 § 3.

[22] Resolution in Wilkins, *Concilia* IV, 16.

[23] *An Acte to take away all posityve Lawes againste Marriage of Priestes.*

[24] *An Acte for the declaracion of a Statute made for the Marriage of Priestes and for the legittimacion of their Children.*

[25] *An Acte for the Repeale of certayne Statutes made in the time of the Raigne of Kinge Edwarde the Syxthe.*

[26] Articles of queen Mary, 4th March, 1554 (Cardwell, *Doc. Ann.* I, 111):—

Art. 7. *Item, That every bishop, and all the other persons aforesaid, proceeding summarily, and with all celerity and speed, may, and shall deprive, or declare deprived, and amove according to their learning and discretion all such persons from their benefices and ecclesiastical promotions, who, contrary to the state of their order, and the laudable custom of the church, have married and used women as their wives, or otherwise notably and slanderously disordered or abused themselves; sequestering also, during the said process, the fruits and profits of the said benefits and ecclesiastical promotions.*

Art. 8 mitigates the penalties for priests whose wives are dead, or who, with the consent of their wives, declare their intention of living apart from them.

Art. 9. *Item, That every bishop, and all persons aforesaid, do foresee, that they suffer not any religious man, having solemnly professed chastity, to continue with his woman or wife; but that all such persons after deprivation of their benefice, or ecclesiastical promotion, be also divorced every one from his said woman, and due punishment otherwise taken for the offence therein.*

marry if he could obtain the approval of the following persons: of his bishop, of two justices of the peace dwelling next to the place where the woman had mostly lived before her marriage, of her parents, if living, or two of the next of kin, or if such were not known, of the master and mistress whom she had served. For the marriage of bishops the approval of the archbishop and of commissioners specially appointed by the queen was requisite.[27] By injunction of the 9th of August, 1561, the queen further ordained that, upon pain of forfeiting his office, no head or member of any college or cathedral church should have his wife or other woman within the precincts.[28] In the thirty-nine articles of 1563 the marriage of the clergy was recognized as permissible.[29]

Only by slow degrees were the obstacles which in practice such marriages had to encounter removed. That even at the death of Elizabeth some reserve still prevailed is shown by the fact that, in the *Millenary Petition* addressed by the puritans to James I at his accession,[30] among other requests was one for the restoration of the laws of Edward VI as to the marriage of priests. That restoration

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[27] First *injunctions* of Elizabeth, 1559 (Cardwell, *Doc. Ann.* I, 178) c 29: *Item, Although there be no prohibition by the word of God, nor any example of the primitive church, but that the priests and ministers of the church may lawfully, for the avoiding of fornication, have an honest and sober wife, and that for the same purpose the same was by act of Parliament in the time of our dear brother king Edward VI made lawful, whereupon a great number of the clergy of this realm were then married, and so continue; yet because there hath grown offence, and some slander to the church by lack of discreet and sober behaviour in many ministers of the church, both in choosing of their wives, and indiscreet living with them, the remedy whereof is necessary to be sought: it is thought therefore very necessary, that no manner of priest or deacon shall hereafter take to his wife any manner of woman without the advice and allowance first had upon good examination by the bishop of the same diocese, and two justices of the peace of the same shire, dwelling next to the place, where the same woman hath made her most abode before her marriage; nor without the good will of the parents of the said woman, if she have any living, or two of the next of her kinsfolks, or, for lack of knowledge of such, of her master or mistress, where she serveth. . . . And for the manner of marriages of any bishops, the same shall be allowed and approved by the metropolitan of the province, and also by such commissioners, as the queen's majesty thereunto shall appoint. And if any master or dean, or any head of any college shall purpose to marry, the same shall not be allowed, but by such to whom the visitation of the same doth properly belong, who shall in any wise provide that the same tende not to the hinderance of their house.*

[28] Printed in Cardwell, *Doc. Ann.* I, 273: . . . *that no manner of persons, being either the head or member of any colledge or cathedral church . . . shall . . . have . . . within the precinct of any such colledge his wife or other woman to abide and dwell in the same, or to frequent and haunt any lodging within the said colledge, upon pain that whosoever shall do to the contrary, shall forfeite all ecclesiasticall promotions in any cathedrall or collegiate church within this realme.*

[29] Art. 32: *Episcopis, Praesbiteris, et Diaconis nullo mandato divino praeceptum est, ut aut coelibatum voveant, aut a matrimonio abstineant. Licet igitur etiam illis, ut caeteris omnibus Christianis, ubi hoc ad pietatem magis facere iudicaverint, pro suo arbitratu matrimonium contrahere.*

[30] Compare § 7, note 13.

and, concurrently, the repeal of the obstructing act of Mary were accomplished by 1 *Jac. I* (1603/4) c 25 s 8.

The rules which forbade a son to succeed immediately to his father's benefice remained nominally in force; but the dispensing power previously exercised by the pope had passed to the archbishop of Canterbury,[31] who, as it seems, always granted the dispensation required.[32]

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[31] 25 *Hen. VIII* (1533/4) c 21 § 3, repealed by 1 & 2 *Phil. & Mar.* c 8 s 3, revived by 1 *Eliz.* c 1 s 2.

[32] According to Gibson, *Codex* 796, three hundred such dispensations were given between 1660 and 1712. Cf. Phillimore, *Eccl. Law* 404.

V. The Several Authorities in the Church.

1. THE KING.

A. MEDIEVAL POWERS.

a. In relation to foreign influences.

§ 23.

1. *The supreme judicial power. Restriction of appeals to the pope.*[a]

The first instance of an appeal reaching the pope from England is found in the early Anglo-Saxon period: in 678 Wilfrid, bishop of York, appealed against archbishop Theodore of Canterbury, who, in concert with king Egfrid of Northumbria and without Wilfrid's consent, had divided his see.[1] Upon the same question in 702 Wilfrid lodged an appeal against the decision of a council held by king Aldfrid of Northumbria in the presence of Brihtwald, archbishop of Canterbury.[2] The decisions of the supreme pontiff at this time were, however, executed either not at all, or after fresh discussion which took place in England. Another case in which recourse was had to Rome is reported from the tenth century. The occasion was a sentence of excommunication pronounced by Dunstan, archbishop of Canterbury (959–88), for entering into an unlawful marriage. The pope advocated the recall of the excommunication, which Dunstan, however, refused to make.[3] A new example of

[1] The text of Wilfrid's appeal (in which occurs the phrase *hujus sacrosanctae sedis appellari subsidium*) and of the decision of the Roman episcopal council under the presidency of pope Agatho (*statuimus atque decernimus*) will be found in Haddan and Stubbs, *Counc.* III, 136.

[2] Haddan and Stubbs, *Counc.* III, 253: . . . *fiducialiter sedem appello apostolicam: vestrum autem quisquis deponere meum dignitatis gradum praesumit, a me hodie invitatus mecum pergat illuc ad iudicium.* For two intervening appeals to the pope by Wilfrid see Haddan and Stubbs, *Counc.* III, 254, note.

[3] Adelard, *Vita S. Dunstani* (*Memorials of Dunstan; Rer. Brit. Scr.* No. 63) p. 67: . . . *quiddm illustrium pro illicito matrimonio saepius ab eo redargutus, sed non correctus, gladio tandem evangelico est a Christo divisus. Qui Romam adiens dominum apostolicum pro se Dunstano scriptis satisfacere optinuit. Hic Dunstanus . . . moveri non potuit: sed ipso apostolico mente altior in se solidus perstitit, 'Scias,' inquiens legato, 'nec capitis plexione me a Domini mei auctoritate movendum.'*

[a] For the period up to the reformation see Stubbs, *Const. Hist.* III, 360 ff. c 19 § 403.

appeal was furnished in 1052 by archbishop Robert of Canterbury.[4] But in all these cases there was no question of a tribunal with jurisdiction acknowledged on all sides, but rather of an appeal by one of the parties to a foreign power whose decisions and representations would not be recognized by the other.[5] The same statement holds good in respect of certain cases in later times.

With the conquest applications for a papal judgment became more frequent. This is perhaps to be ascribed to the circumstance that the Normans brought with them from France the views current there as to relations with the pope; moreover, the assignation by the state to the church of particular departments of law to be governed by ecclesiastical forms must have tended to encourage in such departments the multiplication of appeals to Rome. But from the outset, the Norman kings set themselves to restrict applications to a foreign quarter for final judicial decisions: they allowed no appeals whatever when the matter at issue fell within the province of the royal courts; and to test the admissibility of appeal in each case, they required that the royal licence to make it should first be procured.[6] Pope Paschal II complained (1115)

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[4] Robert was a Norman. He fled before the leaders of the Anglo-Saxon party, when they returned in arms to England, and was then declared an outlaw by the national council (*Anglo-Saxon Chronicle*, *Rer. Brit. Scr.* No. 23; I, 319–21). William of Malmesbury, *Gest. Pont.* (*Rer. Brit. Scr.* No. 52) 35: . . . *juditii deliberationem* (at the council) *preveniens, Romam ivit. Unde cum epistolis innocentiae et restitutionis suae allegatricibus rediens, finem vitae apud Gimegium* (Jumièges) *invenit.* No notice was taken in England of his appeal to the pope; and Stigand was appointed archbishop in place of the absent Robert. The non-canonical appointment of Stigand then played a part in securing the pope's support for William of Normandy's attack on England.

[5] The distinction between *appeals to a higher court*, in the modern sense, and informal applications to a third party is further obscured by the fact that up to the late middle ages *appellatio* to the pope might be made even before the lower authorities had given their final decision. Cf. Richter, *Kirchenrecht* § 210.

[6] William I had *before* the conquest taken proceedings at Rome touching his marriage (Stubbs, *Const. Hist.* III, 361 c 9 § 403). The questions as to the precedence of the archbishop of Canterbury and as to boundaries of the provinces of Canterbury and York (from 1070 onwards) were discussed both in England and in Rome (cf. §§ 33, 34).

Of William II's principle Anselm reports in a letter of 1099–1100: . . . *sine sua jussione apostolicum nolebat recipi aut appellari in Anglia* (printed more fully in § 4, note 17). In 1097 when Anselm begged for permission to make a journey to Rome, the king called upon him: *quatinus aut jurejurando promittas quod nunquam amplius sedem Sancti Petri vel ejus vicarium pro quavis quae tibi queat ingeri causa appelles, aut sub omni celeritate de terra sua* (the king's) *recedas.* Anselm refused the oath. Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) 83. Similarly Anselm in the letter above mentioned.—In a case before the *curia regis* against William, bishop of Durham, 1088, for breach of homage (he had taken part in a rebellion) the bishop sets up the plea (according to the canons a well-grounded one) that, before he is bound to answer to the charge, he must either be reinstituted in possession of the bishopric taken from him or it must be settled by ecclesiastical judgment that such previous reinstitution is not requisite. This preliminary point is decided, in spite of the bishop's protest, not by the bishops alone and by ecclesiastical procedure, but by the *curia regis*, a court composed both of laymen and bishops; and the

in letters to the king and the English bishops that appeals to Rome were hindered.[6a] After that, in the year 1126, archbishop William of Canterbury had accepted the position of a papal legate—his successors for the most part filling the same office—the boundary between the authority which the archbishops exercised in their own right and that which they derived from the pope, was gradually effaced. The admissibility of appeal from one who had received a commission to him who gave it could hardly be disputed. The weakness of Stephen's rule had the same tendency. The consequences were a substantial increase in the number of appeals, and, possibly, neglect of the requirement that the king's permission should previously be obtained.[7] These evils Henry II endeavoured

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bishop's plea is rejected. The bishop appeals to the see of Rome against this ruling as uncanonical. Upon this the *curia* deliberates anew and pronounces by the mouth of the original accuser the sentence: *Domine episcope, regis curia et barones isti vobis pro justo judicant, quando sibi* (the king) *vos respondere non vultis de his de quibus vos per me appellavit, sed de placito suo invitatis eum Romam, quod vos feodum vestrum inde forisfacitis.* So far, however, as is known, bishop William did not afterwards institute proceedings in Rome. (A fuller account of the whole proceedings will be found in the treatise: *De injusta vexatione Willelmi episcopi primi per Willelmum regem filium Willelmi magni regis*, in *Rer. Brit. Scr.* No. 75, I, 170 ff.)

[6a] Letter to Henry I (Eadmer, *Hist. Nov.; Rer. Brit. Scr.* No. 81; p. 229): *Nullus inde* (from England) *clamor, nullum inde judicium, ad sedem apostolicam destinatur.* Letter to Henry I and the English bishops (*l.c.* 233): *Vos oppressis apostolicae sedis appellationem subtrahitis, cum sanctorum patrum conciliis decretisque sancitum sit ab omnibus oppressis ad Romanam ecclesiam appellandum.* — Cf. Hugo Cantor (*The Historians of the Church of York, Rer. Brit. Scr.* No. 71) II, 212: *Rex . . . abeuntibus archiepiscopis prohibendo imperavit, si dominus papa concordiam inter se provisam concedere et confirmare nollet, ne inde placitarent; sin autem, ad ecclesias suas non reverterentur.* (The archbishops were formally summoned to Rome in the matter of the dispute about precedence. Summons *l.c.* 210; it is dated 13th April, 1125.)

[7] In the year 1128 Urban, bishop of Llandaff, appealed to the pope against the decision of a national synod, held at Westminster in 1127 by the archbishop of Canterbury as papal legate, in a boundary dispute between himself and the bishops of St. David's and Hereford. At first the last mentioned bishops did not appear at Rome; in the course of the proceedings, however, the bishop of St. David's defended his cause there and delivered, amongst other papers, a letter of recommendation from the king (Haddan and Stubbs, *Councils* I, 334). It is not apparent that Henry I opposed this exercise of papal jurisdiction, although the pope repeatedly gave him notice of the impending discussion of the case at Rome. Documents in the case will be found in Haddan and Stubbs I, 321–344. An earlier *appellatio* of Urban of Llandaff in 1119 (Haddan and Stubbs I, 309) was merely an appeal for papal protection, and was not followed by proceedings before the pope in which both parties were represented; the pope, on the contrary, instructed the archbishop of Canterbury to pronounce upon the disputed questions. For later discussions in this boundary dispute see Stubbs, *Const. Hist.* I, 402, note 3 c 11 § 125.

During Stephen's reign, with the extended right of chapters to elect begin appeals in respect of disputed episcopal elections. See more on this point in Stubbs, *Const. Hist.* III, 311 c 19 § 381.—Henry of Huntingdon (*Rer. Brit. Scr.* No. 74) 282, contemporary with Stephen, writes: *Anno XVI* (*i.e.* 1151) *Theobaldus Cantuariensis archiepiscopus, apostolicae sedis legatus, tenuit concilium generale apud Lundoniam in media Quadragesima, ubi rex Stephanus et filius*

to check in the constitutions of Clarendon (1164), which provided that, if justice could not be had of the archbishop, appeal should be to the king, and that by his orders the suit might be finally determined in the archiepiscopal court; it was not allowable to proceed further without the king's assent.[8] This provision was in keeping with the older law, as, indeed, the constitutions declared, setting forth that the intention of them was only to establish what had been law in the days of Henry I. Nevertheless, the principle could not be maintained. On the contrary, at the reconciliation of Avranches (1172) the king had to concede that thenceforth, in matters ecclesiastical, appeals to the pope should not require royal consent; doubtful appellants could, however, be required to give security that they intended no injury to the king or the realm.[9] In the years which followed the attempt was, indeed, still continued, by intervention

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suus Eustachius et Angliae proceres interfuerunt, totumque illud concilium novis appellationibus infrenduit. In Anglia namque appellationes in usu non erant, donec eas Henricus Wintoniensis episcopus, dum legatus esset (*i.e.* 1139–43), *malo suo crudeliter intrusit; in eodem namque concilio ad Romani pontificis audientiam ter appellatus est.* Stubbs, *Const. Hist.* III, 361 c 19 § 403 supposes that the contention that appeals were first introduced through the legate, Henry of Winchester, should rather be referred to appeals to this legate than to appeals to Rome. But such a distinction is not justified by the text of the passage, especially as the chronicler makes the remark in connexion with the statement that at that council appeal was thrice made *to Rome.*

[8] c 8: . . . *si archiepiscopus defuerit* (*defecerit*) *in justitia exhibenda, ad dominum regem perveniendum est postremo ut praecepto ipsius in curia archiepiscopi controversia terminetur, ita quod non debeat ulterius procedere absque assensu domini regis* (see full text in appendix IV). Cf. also the report of the bishop of London to the pope (1165) of a conversation held at the latter's suggestion with the king (*Materials for Hist. Becket. Rer. Brit. Scr.* No. 67, V, 205): *In appellationibus ex antiqua regni sui constitutione id sibi vindicat honoris et oneris, ut ob civilem causam nullus clericorum regni sui ejusdem regni fines exeat, nisi an ipsius auctoritate et mandato jus suum obtinere queat, prius experiendo cognoscat. Quod si nec sic obtinuerit, ad excellentiam vestram, ipso in nullo reclamante, cum volet quilibet appellabit. In quo si juri vel honori vestro praejudicatur in aliquo, id se totius ecclesiae regni sui consilio correcturum in proximo, juvante Domino, pollicetur.* Temporarily, during the struggle with Becket, Henry forbade *all* appeals to Rome. See his order to the various sheriffs, Christmas, 1164 (*Materials for Hist. Becket. Rer. Brit. Scr.* No. 67, V, 152): *Praecipio tibi quod, si aliquis clericus vel laicus in bailia tua Romanam curiam appellaverit, eum capias, et firmiter custodias donec voluntatem meam percipias* [*praecipiam?*] . . . Ordinance of Henry II, probably in 1169 (Hoveden, *Rer. Brit. Scr.* No. 51, I, 231; for the date see p. 232, note, and *Materials for Hist. Becket; Rer. Brit. Scr.* No. 67; VII, 147, note, 150, note), c 4: *Item generaliter interdictum est, ne aliquis appellet ad dominum papam, vel ad Cantuariensem archiepiscopum,* . . . On a national assembly at Clarendon, 1166 (*Vita St. Thomae* by Edward Grim, a contemporary of Becket, in *Materials, l.c.* II, 405): *Audiens interea rex quod episcopos Angliae dominus papa mandasset, Clarendunam coegit concilium, ubi juramentum exegit a pontificibus ne quis eorum pro quavis appellatione patria egrederetur, nemo mandatum domini papae susciperet. Et quidem in hunc modum episcopi promiserunt, a laicis vero juratum est. Clamatum est ex ore regis, quod siquis pro quocunque negotio sedem apostolicam appellasset, omnia quae illius essent scriberentur ad opus regis, et ipse truderetur in carcerem.*

[9] Cf. § 4, notes 50, 51.

as occasion offered, to reduce the number of appeals; but the general right to make them in certain cases even without the king's licence was no longer disputed. Under the feeble government of Henry III, the number was very large and, owing to the pope's position as recognized feudal overlord, they sometimes extended to other than ecclesiastical affairs.[10] Edward III and Richard II offered vigorous opposition to their continuance, not however to them as a whole, but to the exercise of appeal in special cases. All the enactments of this and the ensuing period down to the reformation which relate to appeals, exhibit themselves merely as supplementary to legislation against provisions. Only in so far as was necessary for the execution of the statutes against provisors was the endeavour sustained to limit the power of the pope and to check appeals to him. Thus these were in general prohibited simply in cases in which the secular authorities were competent; and even then it was the right of patronage which was mainly defended. Sole competence in all cases was not at this time claimed by the state.[11]

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[10] Henry III and his successors claimed as the privilege of England that the decision of appeals addressed to the pope should take place *in England*. If those to whom the pope delegated his decision lived in England, the king could exert influence upon them. Such delegation was very customary, but did not always take place. (Cf. Stubbs, *Const. Hist.* III, 362 c 19 § 403 and Stubbs, append. I, 30, *Report of Royal Commission* on *Eccl. Courts*, 1883, Reports XXIV.) We find references to the privilege in question in Prynne, *Records* II, 623 (Writ of Henry III, 26th Apr. 1244: *Cum a sede Apostolica nobis specialiter sit indultum, ne quis de Regno nostro in foro Ecclesiastico, extra Regnum nostrum, per Literas Apostolicas trahatur in causam, . . .*), 516 (in year 1239), 718 (in year 1248), 941 sq. (in year 1258), 980 (in year 1261), III, 227 (in year 1279), and in *Ann. Dunstapl.* (*Rer. Brit. Scr.* No. 36) III, 170, year 1246. See also below, § 24 note 9 *sub finem*, and § 4 note 119 No. 5. Cf. further the letter of Edward II, dated 26th Jan. 1320, to the abbot of St Albans, in Rymer, *Foedera* 4th Ed. II, 416: . . . *considerantes quod cognicio hujusmodi transgressionum* (namely *contra pacem nostram*), *infra regnum nostrum factarum, ad nos racione regie dignitatis nostre, in eodem regno discutienda pertinet; et quod ullus de eodem regno, super hiis quorum cognitio ad nos pertinet, trahi non debeat in causam extra idem regnum; . . .*—For the prohibition of appeal against the episcopal decision in a suit touching illegitimacy cf. writ of Henry III to the archbishop of Dublin, 19th November, 1223 (*Rotuli Clausarum* I, 629), Bracton, Book V tract. 5 c 19 § 14 (*Rer. Brit. Scr.* No. 70; VI, 314 and agreement of 1234 in appendix to Bracton, *l.c.* II, 606 and VI, 510; in a suit touching validity of marriage: Bracton, Book IV tract. 6 c 11 § 4 (IV, 536).—The archbishop of Canterbury exercised in the thirteenth century, perhaps earlier, the right of protecting the property of the appellants during the progress of an appeal. This right was called *tuitio*. Cf. preface to *Regist. Epist. Peckham*, vol. II p. cvii and instructions of the archbishop of Canterbury, 1308, in Spelman, *Concilia* II, 457.

[11] The following are the enactments relevant here:—

I. Immediately connected with enactments touching provisions:—

25 *Ed. III* (1350/1) st. 4 *Statutum de Provisoribus* [confirmed by 38 *Ed. III* (1363/4) st. 2 c 1 and 13 *Ric. II* (1389/90) st. 2 c 2]. Any one who on the ground of a provision disturbs another in possession is to be imprisoned and must give satisfaction (in money) to the king and to the person disturbed. *Et nient meins, avant qils soient delivres facent pleine renunciacion, et troevent sufficeante seurete qils nattempteront tiele chose*

In spite of the limitation specified, the enactments against appeals could not long be strictly carried into effect. Open violations of them were not infrequent. Yet, disregarding all the intimidations of the popes, especially of Martin V (1417–31), parliament steadily refused, for the most part in concert with the king, to repeal the acts and so surrender every weapon of defence.[12] They

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en temps avenir, ne nul proces sueront par eux ne par autre devers nuly en la dite Court de Rome, ne nule part aillours, por nules ticles emprisonementz ou renunciacions, ne nule autre chose dependant de eux. (Printed at length in appendix VIII.)

38 *Ed. III* (1363/4) st. 2. cc 1–3 are aimed at those who obtain provisions and those who make appeals. s 4 enacts: any one who proceeds against any person in the kingdom on account of any matter contained in this act shall be punished for so doing and must compensate the injured party.

13 *Ric. II* (1389/90) st. 2 c 3: *Item ordeigne est et etabli qe si ascun port ou envoie deinz le roialme . . . notre . . . Roy ascun somonces sentences ou excomengementz envers ascun persone de quel condicion qil soit a cause de la mocion . . . fesance assent ou execucion du dit estatut des provisours*, he is to be punished; as is any person who gives effect to such summonses, sentences or excommunications.

II. More general:—

27 *Ed. III* (1353) st. 1 *Statutum contra adnullatores Iudiciorum Curiae Regis.* c 1: *. . . assentu est et acorde, par notre dit Seigneur le Roi et les grantz et communes susditz, qe totes gentz de la ligeance le Roi, de quele condicion qils soient, qi trehent nulli hors du Roialme, en plee dount la conissance appartient a la Court le Roi, ou des choses dount jugementz sont renduz en la Court le Roi, ou qe suent en autri Court a deffaire ou empescher les juggementz renduz en la Court le Roi, eient jour . . . destre devant le Roi et son conseil, ou en sa Chancellerie, ou devant les Justices le Roi . . . a respondre en lour propre persones au Roi du contempt fait en celle partie; . . .*

38 *Ed. III* (1363/4) st. 2 c 1. Those are to be punished who procure summonses from Rome against king or subjects: *sur causes dount la cognissance et finable discussion appartient a notre Seigneur le Roi, et a sa Courte roiale et autrement; . . .*

16 *Ric. II* (1392/3) c 5 (the chief praemunire act). The *commons* have set forth as follows: The bishops are bound to execute the decisions of the royal courts in patronage cases *et auxint sont tenuz de droit de faire execucion de plusours autres mandementz notre seigneur le Roi, . . . Mes ore tarde diverses processes sont faitz par le seint piere le Pape et sensures descomengement sur certeins Evesques Dengleterre porceo qils ount fait execucion des tieux mandementz . . .* and report said that the pope was about to remove, without the king's assent, some bishops from the realm, others into it; *et ensy la Corone Dengleterre qad este si frank de tout temps qele nad hieu nully terrien soveraigne, mes immediate subgit a Dieu en toutes choses tuchantz la regalie de mesme la Corone et a nully autre, seroit submuys a Pape, . . . Sur quoi . . . le Roy del assent . . . ad ordeigne et establie, qe si ascun purchace ou pursue ou face purchacer ou pursuer en la Court de Rome ou aillours ascuns tieux translacions, processes et sentences de escomengementz bulles instrumentz ou autre chose quelconqe, qe touche le Roi notre seigneur encountre luy sa corone et regalie ou son Roialme come devaunt est dit*, further, any person who brings them into the kingdom or executes them is to be punished.

[12] Cf. § 4, notes 124 ff.

were from time to time enforced and thus served in the long run to check the abuse at which they were aimed.

Further progress in the same direction was made by Henry VIII. The impulse which moved him was his wish to have the nullity of his marriage with Catherine pronounced by Cranmer, without leaving open the possibility of an appeal from the archbishop to the pope, who maintained the validity of the union. Henry, like his predecessors, did not at first forbid all forms of appeal; but he at once went beyond the legislation of Edward III and Richard II. By 24 *Hen. VIII* (1532/3) c 12 it was laid down that thenceforth appeals to the pope from the judgments of ecclesiastical courts in causes testamentary, causes of marriage, tithes and offerings were illegal; such causes were to be finally determined by the authorities of the church in England.[13] But in the very next year, by the *Act of Submission*, 25 *Hen. VIII* (1533/4) c 19, the prohibition was made of universal application.[14]

The two acts just mentioned of Henry VIII were repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 3,[15] but revived by 1 *Eliz.* (1558/9) c 1 s 2.[16]

Henry VIII had not confined himself to forbidding a further appeal from the court of the archbishop to the pope; he had called into existence within the realm courts of appeal from that of the archbishop. In the first of his acts against appeals the independence of the ecclesiastical courts was secured. As a rule, the judgments of the archbishops were to be final; in matters which concerned the king, an appeal was allowable to the upper house of convocation. The second act, however, subordinated the ecclesiastical courts to a

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[13] This act is commonly entitled the *Statute for Restraint of Appeals.* The title in the *Statutes of the Realm* is too wide: *An Acte that the Appeles in suche Cases as have ben used to be pursued to the See of Rome shall not be from hensforth had ne used but wythin this Realme.* s 1 runs: . . . *enacted . . . that all Causes testamentarie, Causes of Matrimony and Divorces, rightes of Tithes, Oblacions and Obvencions, the knowlege wherof . . . apperteyneth to the Spirituall Jurisdiction of this Realme, allrede commensed . . . or hereafter commyng in contencion . . . shalbe frome hensforth harde examined discussed clerely finally and diffinityvely adjudged and determyned within the Kinges Jurisdiccion and Auctoritie and not elleswhere . . .*

[14] s 4: . . . *that . . . no manner of appeales shalbe had provoked or made, out of this Realme or out of any of the Kynges Domynyons, to the Byshop of Rome nor to the See of Rome, in any causes or matters happenyng to be in contencion . . . ; but that all maner of appelles of what nature or condicion soo ever they be of, or what cause or matter soo ever they concerne, shalbe made . . . after suche maner forme and condicion as is lymyted for appeles to be had and prosecuted within this Realme in causes of matrimonye tythes oblacions and obvencions by* 24 *Hen. VIII* c 12 . . .

[15] *An Acte repealing all Statutes Articles and Provisions made against the See Apostolick of Rome since* 20 *Hen. VIII, and also for thestablishment of all Spyrytuall and Ecclesiasticall Possessions and Hereditamentes conveyed to the Layetye.*

[16] *An Acte restoring to the Crowne thauncyent Jurisdiction over the State Ecclesiasticall and Spirituall, and abolyshing all Forreine Power repugnaunt to the same.*

civil authority whose verdicts were subject to no revision. This was the 'Court of Delegates,' consisting of commissioners to be named by the king. The competence of the upper house of convocation was thus silently abolished.

Since Henry's day the principle has been maintained that in all cases judgment shall belong, in the last resort, to a civil tribunal, superior to all ecclesiastical courts. The precise constitution of that tribunal has, however, undergone many changes in later times.[17]

§ 24.

2. *Restrictions of the papal legates.*[a]

During the Anglo-Saxon period legates were on several occasions, though in comparison with later periods seldom, despatched to England, sometimes by the king's desire, sometimes for other causes and without consulting him.[1]

It is recorded that under William I it was a recognized rule that the pope might only send legates at the sovereign's request.[2]

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[17] Cf. on this point § 62.

[1] The passage in the reports of the legates to the pope, 787 (Haddan and Stubbs, *Counc.* III, 448): . . . *ut scitis, a tempore sancti Augustini pontificis sacerdos Romanus nullus illuc missus est, nisi nos* is not to be taken as meaning that George and Theophylact were the first legates sent to England since Augustine: for only legates of priestly rank are spoken of, and *illuc* refers probably to Northumbria and not to all England. And yet Augustine himself had not traversed the north.—Compare, for example, the mention of a previous emissary in the report of the council at Rome, 679 (Haddan and Stubbs III, 134): . . . *invenerunt* . . . *virum venerabilem Johannem archicantatorem ecclesiae sancti apostoli Petri, et abbatem monasterii beati Martini, qui a Roma per jussionem Papae Agathonis in Britanniam est directus.* Beda, *Hist. Eccles.* IV, c 18 § 305: *Intererat huic synodo* (Haethfelth, 680) *pariterque catholicae fidei decreta firmabat, vir venerabilis Johannes archicantator.*—For further cases of the despatch of legates in Anglo-Saxon times see Einhard, *Ann.*, to year 808 (Haddan and Stubbs III, 561): *Interea Rex Nordanhumbrorum de Brittania insula, nomine Eardulf, regno et patria pulsus, ad imperatorem dum adhuc Novismagi* (Nimwegen) *moraretur venit, et patefacto adventus sui negotio, Romam proficiscitur, Romaque rediens per legatos Romani pontificis et domini imperatoris in regnum suum reducitur. Praerat tunc temporis Ecclesiae Romanae Leo Tertius, cujus legatus ad Brittaniam directus est Aldulfus diaconus de ipsa Brittania, et cum eo ab imperatore missi abbates duo Hrotfridus notarius et Nantharius abbas de Sancto Audemaro.* Moreover the signature, not in a prominent place, to the minutes of the council of Clovesho, 824 (Haddan and Stubbs III, 593): *Nothhelm praeco a domno Eugenio Papa.* William of Malmesbury, *Gesta Pontificum* (*Rer. Brit. Scr.* No. 52) 252, year 1062: *Consecuti sunt abeuntes* (from Rome) *Romanorum legati, qui sanctissimum Wlstanum per consensum Aldredi Wigornie ordinaverunt episcopum.* (Cf. also Florentius Wigorniensis, *Chronicon* [*Monum. Hist. Britann.*] I, 610: *pro responsis ecclesiasticis ad regem Anglorum missi.*)

[2] Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 258, on the negotiations of Henry I with pope Calixtus II in 1119: *Acta igitur sunt multa inter illos, quorum gratia par erat tantas personas convenisse. Inter quae rex a papa impetravit ut omnes consuetudines quas pater suus* (*i.e.* William I) *in*

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[a] Stubbs, *Const. History* III, 306 ff. c 19 § 380.—Friedberg, *De finium inter ecclesiam et civitatem regundorum judicio etc.* 154 ff.

William II, in the year 1095, made an agreement with the papal envoy that no person should be sent save some one to be designated by the king in each case as it arose.[3] Guido, archbishop of Vienne, who in 1100 came to England with legatine powers, was not acknowledged there.[3a] In 1116 Paschal II commissioned Anselm, abbot of St. Saba, to represent him, the intention being that the abbot should take up his abode permanently in England and weaken the power of the archbishop of Canterbury, who until then had been almost independent. But Henry refused the legate admission to the land.[4] The pope was naturally enraged, but failed to carry his point. After the council of Rheims, at which Calixtus II had sought in another way, namely by raising the position of York, to attain the ends of the papal policy,[5] he abandoned his position in regard to the despatch of legates. At an interview with king Henry (1119) he confirmed him in the possession of the right already, as was averred, enjoyed by William I, that no papal legate could be sent to England save at the king's request.[6] During the next hundred years the legatine

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Anglia habuerat et in Normannia sibi concederet, et maxime ut neminem aliquando legati officio in Anglia fungi permitteret, si non ipse, aliqua praecipua querela exigente, et quae ab archiepiscopo Cantuariorum caeterisque episcopis regni terminari non posset, hoc fieri postularet a papa.—After the conquest there had appeared (1070) in England papal legates of whose services William had availed himself in deposing the native bishops. On their departure Lanfranc was authorized by the pope to give final decision in two pending cases. Letter of the pope to William I, 1072, in Wilkins, *Concilia* I, 326: *In causis autem pertractandis et diffiniendis ita sibi* (the archbishop) *vestrae* [in Rymer, *Foedera* 4th Ed. I, 1 is *nostrae*] *et apostolicae auctoritatis vicem dedimus, ut quicquid . . . determinaverit, quasi in nostra praesentia diffinitum, deinceps firmum et indissolubile teneatur.*

[3] Hugo of Flavigny (printed more fully in § 4, note 17): . . . *conventionem fecerat cum eo Albanensis episcopus* (cardinal bishop of Albana, legate in England 1095), *quem primum illo miserat papa, ne legatus Romanus ad Angliam mitteretur nisi quem rex praeciperet, . . .*

[3a] Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) 126, printed in § 34, note 13.

[4] Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) 239: *Sed rex Henricus antiquis Angliae consuetudinibus praejudicium inferri non sustinens, illum ab ingressu Angliae detinebat, . . .* William of Malmesbury, *Gesta Pontificum* (*Rer. Brit. Scr.* No. 52) 128: *Nam et in principio regni Henrici venerat Angliam ad exercendam legationem Guido Viennensis archiepiscopus, qui postea fuit apostolicus; tunc Anselmus; nec multo post quidam Petrus. Omnesque reversi nullo effectu rei, grandi praeda sui, Petrus maxime, . . . Crebra ergo ad Angliam commeabat legatio Romanorum insidiantium imbecillitati Radulfi, set effugabantur omnes cautela Henrici. Nolebat enim ille in Angliam praeter consuetudinem antiquam recipere legatum nisi Cantuariensem archiepiscopum, illique libenter refringebant impetum, propter violentiam denariorum.* Cf. also Florentius Wigorniensis, *Chron.* (ed. Thorpe) II, 69.

[5] Cf. § 34, near note 10.

[6] Eadmer, *Hist. Nov.* 258, printed above, note 2. Cf. Simeon of Durham, *Hist. Regum* (*Rer. Brit. Scr.* No. 75) II, 276, year 1125: *Johannes Cremensis accepta ab Apostolico super Britanniam legatione, cum diu in Normannia. retentus esset a rege, tandem permissus in Angliam transvehitur, . . .* If a legate was admitted into England, he seems at this earlier time not to have had the right to exercise administrative powers without the consent of the archbishop of Canterbury. Cf. a summons by the archbishop to the bishop of Llandaff for a council at London (Wilkins, *Concilia* I, 408 and Haddan and Stubbs I, 317): *Literis istis tibi notum facere volumus, quod Johannes, ecclesiae*

office was mostly, and afterwards until the reformation constantly, combined with the archbishopric of Canterbury. From the middle of the fourteenth century the archbishops of York were also almost always papal legates; indeed they had in several cases before that time held the dignity.[7] Nevertheless, the pope still despatched, as occasion was, special legates and to these the early regulations were applicable. So, for example, when Vivian (1176) had entered the kingdom without royal licence, he was sharply reminded of the necessity of obtaining it.[8] At the beginning of the thirteenth century, in the days of England's deepest abasement, the sending of legates without the royal permission seems to have occurred. But even then the earlier right was not forgotten.[9] Afterwards leave was asked and generally given.[10] The old right of the crown was

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Romanae presbyter cardinalis atque legatus, ordinatione, nostraque conniventia concilium celebrare disposuit . . . Hugo Cantor (*The Historians of the Church of York; Rer. Brit. Scr.* No. 71) II, 210: *Legatus* (John of Crema) *tota fere Anglia circuita et perambulata usque prope Scotiam, in Nativitate Beatae Mariae Concilium Londoniae celebravit, quod in tempore regum utriusque Willelmi Romanus legatus nunquam fecerat.* The bull of 5th June, 1190 (*Rad. de Diceto; Rer. Brit. Scr.* No. 68; II, 83) touching the transfer of the legatine office to the bishop of Ely sets forth that this is done *juxta . . . desiderium et postulationem . . . Ricardi . . . regis Anglorum.*

[7] For more on the combination of legatine powers with the archbishopric see § 34, near notes 12 ff.

[8] Hoveden (*Rer. Brit. Scr.* No. 51) II, 98; July, 1176: *. . . Qui* (*Vivianus*) *cum in Angliam veniret, dominus rex Angliae misit ad eum Ricardum Wintoniensem et Gaufridum Eliensem episcopos, et interrogavit eum, cujus auctoritate ausus erat intrare regnum suum sine licentia illius. His igitur interrogationibus praedictus cardinalis plurimum territus, de satisfactione iuravit regi, quod ipse nihil ageret in legatione sua contra voluntatem illius, et sic data est ei licentia transeundi usque in Scotiam.* According to Benedict (*Rer. Brit. Scr.* No. 49) I, 118, Vivian had to swear: *quod nihil ageret in legatione sua, quod esset contra ipsum* (the king) *et regnum suum.* King John ordained: *ut nullus de regno . . . legatum vel nuntium sedis apostolicae . . . recipere attentaret;* but shortly afterwards withdrew the order (letter of Innocent III to John, 20th February, 1202, *Letters*, Book V, No. 160), in Migne, *Patrologiae Cursus*, vol. 214, p. 1175.

[9] Letter of the temporal magnates of England to Innocent IV at the general council of Lyons, 1245 (Matth. Paris, *Chronica Majora; Rer. Brit. Scr.* No. 57; IV, 441; printed therefrom by Rymer, *Foedera* 4th Ed. I, 362; from a document in the Exchequer, with some deviations, in Cole, *Documents* 351): *. . . gravamur . . . , quod magister Martinus praefatum regnum, sine domini Regis licentia, cum majore potestate quam unquam vidimus habere legatum a domino Rege postulatum, nuper ingressus* (*licet non utens legationis insigniis, multiplicato tamen legationis officio*) *novas quotidie proferens potestates inauditas, excedens excessit, . . . privilegio Regis admodum derogando, per quod ei a sede apostolica specialiter indulgetur, ne quis in Anglia legationis fungatur officio, nisi a domino Rege specialiter postulatus* [in Cole is added: *et ne quis extra regnum trahatur in causam*]. Resolution of the English magnates, 1264 (in Marca, *De concordia sacerdotii et imperii.* Book V c 56 § 13): *quod nullum legatum debent admittere, nisi fuerit petitus a Rege et regni communitate.*

[10] Clement V begs, under date 21st Nov. 1307, a safe conduct, of the accustomed form, for his nuncios (Rymer, *Foedera* 4th Ed. II, 16). Examples of such safe conducts, for a definite time or subject to revocation, will be found in

maintained by formal protest when bishop Beaufort of Winchester, who had been engaged in the war with the Hussites and whom Martin V in his dispute with Chichele had appointed legate, re-entered England without invitation (1428).[11] Even queen Mary closed the ports (1557) against Peto who, though unacceptable to her, had been nominated by the pope.[12] A natural effect of the reformation was to cause the despatch of legates to be discontinued.[13]

§ 25.

3. *Restriction on the introduction of bulls.*

In most continental countries the rule from the end of the thirteenth century grew to be that the validity of measures consequent on papal decrees depended on the approval of such decrees by the civil power (*placet*).[1]

With regard to England, it is reported of William I that he brought in the new principle that no one in his realm might receive a letter from the pope before it had been shown to himself.[2] William II claimed that, without his consent, none should receive

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Rymer, *l.c.* II, 117 (for papal inquisitors of the templars, 13th Oct. 1310), II, 993 (for a nuncio, 28th Aug. 1337), 3rd Ed. vol. IV pt. I p. 114 (for a nuncio, 30th May, 1407), pt. II p. 4 (for an ambassador and his retinue, 25th Jan. 1412: *proviso . . . quod . . . quicquam, quod in Regis seu Populi sui praejudicium cedere valeat, non attemptent . . .*), pt. IV p. 194 (for nuncios on their way to Scotland, 29th April, 1433, with a similar reservation).

[11] Cf. Stubbs, *Const. Hist.* III, 309, note 3 c 19 § 380. The protest of the king's proctor (printed in Foxe, *Acts and Monuments* Ed. 1843 ff. III, 717, note) runs: . . . *dictus christianissimus princeps, dominus meus supremus, suique inclytissimi progenitores dicti regni Angliae reges fuerunt et sunt, tam speciali privilegio, quam consuetudine laudabili legitimeque praescripta, necnon a tempore et per tempus (cujus contrarii memoria hominum non existit) pacifice et inconcusse observata, sufficienter dotati, legitimeque muniti, quod nullus apostolicae sedis legatus venire debeat in regnum suum Angliae, aut alias suas terras et dominia, nisi ad regis Angliae pro tempore existentis vocationem, petitionem, requisitionem, invitationem, seu rogatum, . . . protestor . . . quod non fuit, aut est intentionis praefati . . . principis . . . ac dictorum dominorum meorum de consilio, . . . ingressum hujusmodi dicti reverendissimi patris, ut legati in Angliam, authoritate ratificare, vel approbare, seu ipsum ut legatum sedis apostolicae in Angliam, contra leges, jura, consuetudines, libertates et privilegia praedicta quovismodo admittere seu recognoscere; . . .*

[12] Compare § 6, note 51.

[13] Cf. also § 34, note 31. Under the Stuarts papal agents were tolerated in England. In July, 1687, James II received a nuncio in solemn audience. 11 & 12 *Vict.* (1848) c 108 declared that the English government might have diplomatic intercourse with the 'Sovereign of the Roman States,' but that no papal ambassador might be received who was a minister of the Roman church or jesuit or bound by religious or monastic vows. The act was repealed, the 'Roman States' having ceased to exist, by 38 & 39 *Vict.* (1875) c 66 *Statute Law Revision Act.*

[1] Cf. Richter, *Kirchenrecht* § 48, note 9.

[2] Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) 9: . . . *Non . . . pati volebat quemquam in omni dominatione sua . . . ejus* (the pope's) *litteras si primitus sibi ostensae non fuissent ullo pacto suscipere . . .* (printed more fully in § 4, note 12.)

communications from Rome, or send them thither, or obey papal decrees.[3] The same right was exercised by Henry I.[4] Probably in this respect, as in many others, the reign of Stephen proved detrimental to the king's prerogative.

During the course of the fierce struggle with the pope under Henry II, ordinances were issued which forbade absolutely the bringing of papal missives into the land.[5] But these ordinances were temporary measures of warfare; and from the mere fact of their issue we may, perhaps, infer that under ordinary circumstances the English king at that time no longer pretended to the right of inspecting or approving all injunctions from Rome. But the kings always persisted in the delivery to themselves of bulls whose matter might be to the prejudice of the law of the land or

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[3] Letter of Anselm, 1099–1100: . . . *sine sua jussione . . . nolebat ut epistolam ei* (the pope) *mitterem, aut ab eo missam reciperem, vel decretis ejus obedirem.* Hugo of Flavigny, year 1096: *Quae res in tantum adoleverat, ut . . . nullus esset in Anglia archiepiscopus, episcopus, abbas, nedum monachus aut clericus, qui litteras apostolicas suscipere auderet, nedum obedire, nisi rex iuberet.* (Both passages printed more fully in § 4, note 17.)

[4] Letter of Paschal II to Henry I (Eadmer, *Hist. Nov.; Rer. Brit. Scr.* No. 81; 229): *Sedis enim apostolicae nuncii vel litterae praeter jussum regiae majestatis nullam in potestate tua susceptionem aut aditum promerentur.*— Hugo Cantor (*The Historians of the Church of York, Rer. Brit. Scr.* No. 71) II, 198, year 1122: *Paululum ante Adventum Domini venit quidam de urbe Roma literas domini papae deferens utrique archiepiscopo Angliae; . . . nostro* (the archbishop of York) *sibi missas tradidit, . . . Non defuit qui (de) latore regi diceret archiepiscopum literas domini papae devotione ad Concilium habuisse, quod ex regni consuetudine absque conscientia et licentia regis suscepisse non debuerat; unde rex aliquantum commotus mandavit ei quatinus super hoc rectitudinem facturus in proxima Purificatione Sanctae Mariae ad curiam veniret, et literarum bajulum ad se adduceret . . . archiepiscopus ad regem veniens satis laetabunde susceptus est, nec de satisfactione pro literis acceptis, nec de portitoris earum adductione rex archiepiscopum causatus est . . .*

[5] Ordinance of Henry II, probably in 1169 (Hoveden [*Rer. Brit. Scr.* No. 51] I, 231; on various readings of this document and on the date cf. *l.c.* I, 232, note and *Materials for History Becket; Rer. Brit. Scr.* No. 67; VII, 147, note, 150, note):—

I. *Si quis inventus fuerit ferens litteras vel mandatum domini papae vel Cantuariensis archiepiscopi, continens interdictum Christianitatis in Anglia, capiatur, et de eo, sine dilatione fiat justitiâ sicut de regis traditore et regni.*

III. *Item interdictum est, ne aliquis ferat mandatum aliquod domini papae, vel Cantuariensis. Et si quis talis inventus fuerit, capiatur et retineatur.*

Benedict (*Rer. Brit. Scr.* No. 49) I, 24: In 1171, the king, fearing an interdict, . . . *per commune edictum praecepit justitiis et ballivis suis Normanniae, et nominatim ballivis portuum maris, quod nullo modo permitterent aliquem et nominatim clericum vel peregrinum transfretare in Angliam, nisi prius data securitate quod nullum malum vel damnum regi vel regno Angliae quaereret. . . . Et simili modo sicut in Normannia fecerat, praecepit per commune edictum justitiis et ballivis portuum maris Angliae quod neminem permitterent in Normanniam transfretare, nisi data prius securitate quod malum regi vel regno suo non quaereret. Praecepit etiam quod si quis in Angliam applicuisset portans litteras summi pontificis, vel aliquod gravamen regno, caperetur tanquam publicus hostis.*

the royal prerogatives.[6] In particular cases they also expressly prohibited the execution of papal decrees which had been promul-

[6] As examples compare :—

Matth. Paris, *Chronica Majora* (*Rer. Brit. Scr.* No. 57) IV, 510, year 1246: . . . *per idem tempus prohiberi fecit dominus* [*rex*] *per literas suas, ne quis veniens de curia portans literas bullatas de provisionibus faciendis praecepto Papali, ad extorquendum pecuniam de ecclesia Anglicana et depauperandum regnum, permitteretur vagari per terram ad praelatos; et si quis talis inveniretur, caperetur, carceri regis retrudendus. Portus autem, hoc praecipiens portuum custodibus, fecit custodiri . . .*

Order of Edward II, 8th Nov. 1307 (Rymer, *Foedera* 4th Ed. II, 13): *Rex dilecto et fideli suo Roberto de Kendale, constabulario, castri sui Dovor' et custodi Quinque Portuum suorum, salutem.*

Quia intelleximus quod nonnulli, jura nostra et corone nostre intendentes pro viribus impugnare, bullas et alias litteras diversas, usque in regnum nostrum, a partibus transmarinis deferre indies non desistunt; per quas nobis et predicte corone nostre maximum prejudicium poterit de facili evenire.

Nos volentes hujusmodi periculis decetero obviari; de consilio nostro ordinavimus, quod bulle seu littere alique, per quas nobis aut juri nostro regio prejudicari poterit quoquo modo, infra idem regnum, vel abinde ad partes transmarinas, nobis inconsultis, minime deferantur: vobis igitur mandamus, firmiter injungentes, quod omnes et singulos a partibus transmarinis, usque in regnum nostrum alicubi in balliva vestra transfretantes, vel exinde redeuntes, diligenter scrutari; et omnes bullas ac alias litteras, si quas secum detulerint, per quas citationes vel executiones alique fieri, seu jurisdictio aliqua, in nostri et juris corone nostre prejudicium exerceri poterunt, vel eciam facte fuerint, arestari, et nos de tenoribus bullarum et litterarum illarum, de verbo ad verbum, sine dilatione aliqua certiorari, easque salvo custodiri faciatis, donec de tenoribus illis per vos certiorati fuerimus, et aliud inde vobis duxerimus demandandum: et hoc sicut vos indempnes conservare volueritis, nullatenus omittatis.

Order of 12th May, 1326 (Rymer, *Foedera* 4th Ed. II, 627) provides for the better execution of the above instructions.

Order of Edward III to the authorities of London, Dover and the Cinque Ports, and Canterbury, 12th Dec. 1327 (Rymer, *Foedera* 4th Ed. II, 726) refers to the orders of Edward II; in spite of them bulls touching provisions and various causes prejudicial to the rights of the crown and of the magnates have been brought into the land. The directions contained in the earlier order are, therefore, in the main, repeated.

Rotuli Parliamentorum II, 144 [17 *Ed. III* (1343)]: . . . *Par qoi notre Seigneur le Roi en ce present Parlement, a la suite de la dite Communaltee de son Roialme . . . Par assent des Counts, Barons et Nobles et de la Communaltee de son Roialme ad purveu, ordeignez, acordez, juggez, et considerez, . . . Qe nul, de quel estat ou condition q'il soit, soit il Alyen ou Denzein, port desore, ne facz porter, deinz le Roialme d'Engleterre, sur la greve forfaiture du Roi, Lettres, Bulles Proces, Reservations, Instrumentz, ou ascunes autres choses prejudicieles au Roi ou a son Poeple, pur les liverer as Erceveseques, Evesques, Abbes, Priours, Counts, Barouns, ou ascuns autres deinz le dit Roialme; et qe nul par vertue des tieux Provisions ou Reservations resceive Beneficz de Seinte Esglise; . . .*

Order of 5th April, 1344 (Rymer, *Foedera* 4th Ed. III, 11): *Rex majori et ballivis de Sandwico salutem. Quia datum est nobis intelligi quod vos duos fratres, ordinis Carmelitarum, per dominum Summum Pontificem in episcopos noviter consecratos, et in portu de Sandwico cum bullis et literis, nobis praejudicialibus, applicantes, arestâtis, et sic in aresto tenetis;*

Scire vos volumus quod non est, nec unquam fuit intentionis nostrae, quod, virtute alicujus mandati nostri vobis directi, arestare possetis aliquem in ordinem episcopalem constitutum;

Et ideo vobis mandamus quod statim ipsos episcopos cum servientibus suis, si sic arestati sint, dearestetis, et ipsos, quo voluerint, abire libere permittatis;

gated in the land.[7] As late as the fifteenth century, in the year 1427, for example, during the regency for Henry VI we find an instance of the seizure of papal bulls, in order to render the proceedings of the pope, Martin V, against Chichele inoperative.[8] In like

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Literas tamen hujusmodi, nobis praejudiciales, quas per ipsos, vel suos, infra regnum nostrum delatas inveneritis, sanas et integras coram concilio nostro London' transmittatis.

Order of Edward III, 21st August, 1376, to Sudbury, archbishop of Canterbury (Wilkins III, 107): . . . *Quia datum est nobis intelligi, diversas literas, bullas, et alia scripta quam plura nobis et regno nostro Angliae, ac subditis nostris ejusdem praejudicialia continentia, vobis a partis exteris in regnum et potestatem nostra executioni demandand. fore transmittenda . . . vobis mandamus quod literas, bullas, et scripta quaecunque nobis, ac regno et subditis nostris, ut praedictum est, praejudicialia, si quae vobis deferri contigerit, statim cum ea receperitis, nobis et concilio nostro salvo et secure mittatis; . . .* (the subordinates of the archbishop are to do the same, if such documents come into their hands) *. . .; ut nos, visis et examinatis coram dicto consilio nostro hujusmodi literis et scriptis, ulterius inde fieri faciamus, quod justum fuerit et rationis; publicationi omnium literarum, et aliorum scriptorum hujusmodi, ac executioni inde per vos, seu ipsas personas ecclesiasticas in dioecesi vestra faciendae, quousque aliud a nobis et ipso concilio nostro inde habueritis in mandatis, supersedeatis, et supersederi demandetis sub periculo, quod incumbit.*

[7] Compare *e.g.* the letters of the justiciar (regent during the king's absence) Ranulfus de Glanvilla, dated July, 1187, to the abbot of Battle (who had been entrusted by the pope with the execution of a papal mandate against the archbishop of Canterbury). *Praecipio tibi ex parte domini regis, per fidem quam ei debes, et per sacramentum quod ei fecisti, ut nullo modo procedas in causa quae vertitur inter monachos Cantuarienses et dominum Cantuariensem archiepiscopum, donec* [*inde*] *mecum locutus fueris . . .*, and to the convent of Canterbury: *Prohibeo vobis ex parte domini regis, ne aliquo modo utamini contra dominum Cantuariensem archiepiscopum aliqua perquisitione quam contra eum quaesistis, donec mecum inde locuti fueritis . . .* (*Epistolae Cantuarienses; Rer. Brit. Scr.* No. 38; II, 46). Letter of Richard I to the English bishops, 14th June, 1198 (*Epist. Cant. l.c.* II, 405): . . . *Quia igitur non credimus has litteras* (the papal mandate) *de conscientia domini papae emanasse, si veritatem rei gestae plenius agnovisset, . . . ; cum etiam mandatum istud in praejudicium dignitatis nostrae et libertatis regni nostri elicitum sit, eo scilicet quod regibus, episcopis, comitibus, baronibus, ex antiqua et diu obtenta regni Angliae consuetudine, liceat passim in solo proprio ecclesiam conventualem construere; vobis mandamus et firmiter praecipimus quatenus, sicut vos et honorem nostrum et libertatem regni nostri diligitis, et possessiones vestras et libertates et dignitates ecclesiarum vestrarum illaesas conservari curatis, si quod hujusmodi mandatum domini papae . . . directum sit, ei ad praesens non obtemperetis . . . ;* Complaint of Innocent III in a letter (V, No. 160) of 20th Feb. 1202 to John (Migne, *Patrologiae Cursus*, vol. 214 p. 1175): . . . *cum in regno tuo causas ecclesiasticas committimus cognoscendas, tu prohibes delegatis, ne in earum cognitione procedant, jurisdictionem nostram impediens . . . ;* letter of Edward II to the archbishop of York, 16th Feb. 1318 (*Northern Registers; Rer. Brit. Scr.* No. 61, p. 271).

[8] Chichele to Martin (Wilkins III, 474): *Quae . . . non nisi aliorum relatione perceperam, cum bullas, ut dicitur, super praemissis transmissas nunquam perlegerim, nec aperire obstantibus mandatis regiis ausus eram, . . . sed in archivis regiis usque quo regium concilium convocatum extiterit, remanent custoditae . . .* Royal mandate to the archbishop, 1427 (Wilkins III, 486): . . . *vobis sub fide qua nobis tenemini mandamus et sub poenis in statutis praedictis contentis: quod omnes et singulas bullas et literas hujusmodi . . . salvo et secure custodiatis, et eas absque notifica-*

manner queen Mary in 1557 ordered the seizure of the bulls directed against Reginald Pole, archbishop of Canterbury.[9]

To carry into effect the statutes against provisors and of praemunire, and, at a later date, of the first reforming acts of Henry VIII, it was requisite to declare null and void every form of papal injunction aimed at those who were engaged in the execution of the enactments in question. Clauses of this purport are numerous in the acts.

After the pope had excommunicated queen Elizabeth and forbidden obedience to her under pain of excommunication, there was finally passed in 1571 an unconditional prohibition against the bringing in or publishing of papal bulls of what kind soever.[10]

§ 26.

4. *Restraint upon ecclesiastical officials as to leaving the realm.*

Many cases recorded by the historians of the twelfth century show that, under the first Norman kings, bishops who wished to go abroad, in particular to Rome or to church councils held outside the kingdom, were compelled to seek first the king's permission, the granting of which permission was made dependent on the taking of solemn vows to do nothing abroad prejudicial to the interests of the state.[1] In the constitutions of Clarendon (1164) we thus find it

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tione, publicatione, seu aliqua excusatione earundem facienda, coram nobis et concilio nostro, . . . deferatis . . . indilate, ut his inspectis, ulterius in hac parte faciamus, prout secundum legem et consuetudinem regni . . . fore viderimus faciendum.

[9] Cf. § 6, note 51.

[10] Compare especially 13 *Eliz.* (1571) c 2 *An Acte agaynste the bringing in and putting in Execution of Bulls and other Instruments from the Sea of Rome.*

s 1. Papal bulls have been brought into the land, according to which those who cease from obedience to the queen will receive absolution and be admitted again into the papal church. If any person shall execute such bulls in England or shall give or receive absolution upon the ground of such bulls; *Or els yf any person or persons have obtayned or gotten synce the last daye of the Parliament holden in the fyrst Yere of the Queenes Majesties Raigne, or . . . shall obtayne or get from the sayd Bysshop of Rome or any his Successors or Sea of Rome, any maner of Bull Writinge or Instrument written or prynted, contaynyng any Thinge Matter or Cause whatsoever; Or shall publishe or by any Waies or Meanes put in Ure any suche Bull Writyng or Instrument, That then all and every suche Acte . . . shalbe demed and adjudged . . . to be Hyghe Treason . . .*

[1] Anselm, for example, in 1097 begs the king's permission to go to Rome. Leave, several times refused, was granted after urgent request. Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) 79–86; letter of Anselm to Paschal II (printed in § 4, note 17).—According to Eadmer, *l.c.* 255, Thurstan, archbishop of York, was not allowed to go to the papal council of Rheims (1119), *donec interposita fide qua ei* (the king) *sicut domino suo astrictus erat illi promitteret, se apud papam nihil acturum unde ecclesia Cantuariensis ullum antiquae dignitatis suae dispendium incurreret.* According to Hugo Cantor (*Historians of the Church of York, Rer. Brit. Scr.* No. 71) II, 161 Thurstan on this occasion only promised: . . . *ita me agam quod quae sunt Dei Deo, et quae regis regi reddam.*—Alexander III in a letter, dated 18th March, 1163, to Henry II

declared to be old usage that no archbishop or bishop or *persona regni* may leave the kingdom without royal licence; if any such person goes with this licence he must, upon the king's demand, give security that he will attempt nothing on the journey to and fro, or during his stay abroad, to cause evil or injury to sovereign or realm.[3] This article belongs, it is true, to those rejected by the pope; it was, however, even after the reconciliation of 1172,[3] regarded by the king as binding law.

The *Magna Carta* of 1215 abolished the need of a royal licence to travel outside England as far as time of peace was concerned.[4] But the clause was dropped at the first confirmation of the charter (1216) during Henry III's minority and not inserted again at any subsequent confirmation.[5]

In the fourteenth century the strict rules as to permits were no longer enforced against the magnates of the land; the lower clergy, however, as well as laymen not of high position, required permission to leave England.[6]

(printed in Rymer, *Foedera* 4th Ed. I, 44), having regard to the intention of the king, formed after discussion in the national assembly, to send all archbishops and bishops to the coming council of Tours, assured him: . . . *ut propter hoc tibi aut posteris tuis nullum detrimentum vel incommodum debeat provenire; neque, occasione ista, nova consuetudo in regnum tuum possit induci, vel ipsius regni dignitas minorari.* The need of royal permission to travel abroad was not confined to the clergy. Cf. *Quadripartitus* (a law-book, about 1114, edited by Liebermann, Halle, 1892, p. 146) Book II *Praefatio* §§ 1, 2: *Regem Anglie singulari majestate regni sui dominum esse, manifeste veritatis intuitus et singulorum denique cognovit effectus. Quod . . . situs quoque patrie confidenter adjuvat, nature beneficiis et maris vicinitate conclusus, ut sine gratuita dominorum licencia nullus exitus, nulli relinquantur ingressus.*

[2] c 4 (printed in appendix IV). Similarly an ordinance of Henry II during the struggle with Becket, probably dating from 1169 (Hoveden I, 231; cf. § 23, note 8) c 2: *Item nullus clericus, vel monachus, vel conversus alicujus religionis, permittatur transfretare, vel redire in Angliam, nisi de transfretatione habeat litteras justitiarum, et de reditu litteras regis. Et si aliquis aliter inventus fuerit, capiatur et retineatur.*

[3] Cf. § 4, notes 50, 51.

[4] c 42 (printed in appendix VII) *salva fide nostra.*

[5] Cf. letter of Honorius III to Henry III, 18th January, 1224, in *Royal Letters* (*Rer. Brit. Scr.* No. 27) I, 218: . . . *Ad haec, cum idem episcopus* (Peter des Roches of Winchester) *disposuerit ad nostram venire praesentiam, tractatum nobiscum super executione voti, quod de transeundo in subsidium Terrae Sanctae, suscepto signo crucis, emisit, aliisque suis et ecclesiae suae negotiis habiturus. et his qui volunt ad partes accedere cismarinas, egressus, sicut ferunt, non pateat, absque tua licentia speciali, praefatum episcopum cum comitatu suo libenter venire permittas ad nos et ad Romanam ecclesiam matrem suam, nec impediri per aliquos aliquatenus patiaris, quia haec non magis in suam quam in nostram et apostolicae sedis injuriam redundaret . . .*

[6] 5 *Ric. II* (1381/2) st. 1 c 2 enacts that no one, of laity or clergy, upon pain of confiscation of property, may go forth from the realm without the king's leave, excepting *seigneurs et autres grantz persones del roialme*, great merchants and king's soldiers.—Cf. further 12 *Ric. II* (1388) c 15, which, however, is only directed against leaving the land to obtain papal provisions: *Item qe nulle liege du Roy de quel estat ou condicion qil soit greindre ou meindre passe le*

From the reformation period there belongs here an act of Henry VIII's reign, forbidding attendance at church councils which met abroad.[7]

§ 27.

b. In relation to the national church.[a]

In regard to external influences, the king was only concerned to resist aggression; he claimed no right to co-operate in the central government of the church at Rome. At home, his task was one now of resistance, now of co-operation.

Active participation in ecclesiastical government was an inheritance which English sovereigns received from the early middle ages, when the king had been regarded as the common head alike of the secular and the spiritual administration. As the church grew more and more conscious of its own dignity and powers, this participation was, by a long series of struggles, gradually diminished in extent, though, at all times, not inconsiderable traces of it remained.[1] But simultaneous with that diminution was the growth of rights which enabled the king to repel the encroachments of the ecclesiastical authorities within his own land.

In the period from the Norman conquest to the reformation, the relations of the king and the civil powers to the national church and its officers may be described as follows:—

1. *In the sphere of legislation.*

During the time indicated, as contrasted with the Anglo-Saxon period, the sovereign did not interfere by direct ordinance with ecclesiastical affairs. Publishing no mandates of spiritual import, he confined himself, in this respect, to exercising control over the legislation of the church councils. This control was wielded by means of a right, limited from the thirteenth century onward, to co-operate in the summoning of such councils[2] and also, up to the first third of the twelfth century, by means of a right to ratify or annul their decisions.[3] Attempts of the councils to determine

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meer nenvoie hors du roialme Dengleterre par licence ou sanz licence, sans especial congie du Roy mesmes, por soy provídre ou purchacer ascun benefice . . .—Royal protection (1433) valid for a year, to the prelates journeying to the council of Basel in Rymer, *Foedera* 3rd Ed. IV, pt. IV pp. 194 f. From a later time cf. 13 *Eliz.* (1571) c 3.

[7] 25 *Hen. VIII* (1533/4) c 21 s 14: *Nor that any person religious or other resiant in any the Kynges Domynyons shall fromhensforth departe out of the Kynges Domynyons to or for any visitacion congregacion or assemble for Religeon, but that all suche visytacyons congregatyons and assembles shalbe within the Kynges Domynyons.*

[1] Compare also the statement, not in all respects accurate, of the rights of English kings in ecclesiastical matters contained in the judgment in *Caudrey v. Atton* (33 *Eliz.*) in Coke, *Reports* V, 1 ff.

[2] Compare § 54, near notes 16 ff.

[3] From the time of William I to that of Henry I. Compare § 54, near notes 23 ff.

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[a] Gneist, *Engl. Verfassungsgeschichte* §§ 14, 24.

crown rights were vigorously opposed by the kings.[4] For the rest, the sovereign contented himself with upholding the principle that the extent to which purely ecclesiastical laws or canons were to have force was to be fixed, not by the church, but by royal ordinance or, at a later time, by act of parliament.

2. *In the sphere of jurisdiction.*

The co-operation of the king in ecclesiastical jurisdiction as a supreme head to whom appeal from the archbishop's court lay, ceased as early as the twelfth century, and the position was not regained until the reformation.[5] Yet it was necessary to invoke the aid of the crown when recusants were to be reduced to obedience by physical constraint.[6] Exceptions occur in regard to im-

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[4] Mandate of John under date 26th May, 1206 (Rymer, *Foedera* 4th Ed. I, 94):—

Rex archiepiscopis, episcopis, abbatibus, archidiaconis, et omni clero apud sanctum Albanum ad consilium convocato, salutem.

Conquerente universitate comitum, baronum, militum, et aliorum fidelium nostrorum audivimus, quod non solum in laicorum gravem perniciem, sed eciam in totius regni nostri intollerabile dispendium, super Romiscotto praeter consuetudinem solvendo, et aliis pluribus inconsuetis exactionibus, authoritate summi Pontificis consilium inire et consilium celebrare decrevistis.

. . . Vobis . . . precise mandamus et expresse prohibemus, ne super praedictis vel aliquibus aliis concilium aliquod, authoritate aliqua in fide qua nobis tenemini, teneatis, vel contra regni nostri consuetudinem aliquod novum statuatis, set sicut nos et honorem nostrum et communem regni tranquillitatem diligitis, a celebracione hujus concilii et a praedictis tractatibus ad praesens supersedeatis, quousque cum universitate vestra super hoc colloquium habuimus; . . .

Rot. Parl. 18 *Hen. III* (1233/4) 2 part. m. 17 (printed in Coke, *Inst.* IV, 322): *Mandatum est omnibus episcopis qui conventuri sunt apud Gloucestriam die Sabbathi in crastino Sanctae Katherinae firmiter inhibendo quod sicut Baronias suas (quas de Rege tenent) diligunt, nullo modo praesumant consilium tenere de aliquibus quae ad coronam Regis pertinent, vel quae personam Regis vel statum suum, vel statum concilii sui contingunt. Scituri pro certo quod si fecerint, Rex inde se capiet ad Baronias suas. Teste Rege . . .*

Compare also, for example, the report on a similar occurrence at the legatine council of 1237 (Matth. Paris, *Chron. Maj.*; *Rer. Brit. Scr.* No. 57; III, 417); further, similar mandates of Edward I, of 28th Sept. 1281, in view of the approaching provincial council of Lambeth (*Regist. Epist. Peckham*; *Rer. Brit. Scr.* No. 77; I, 235, 236; also in Wilkins, *Conc.* II, 50 and Rymer, *Foedera* 4th Ed. I, 598); of 21st March, 1297, to the convocation of the southern province which was to meet on the 26th March (Wilkins II, 224); of Edward II, 1309 (Wilkins II, 312); of 30th Nov. 1321 (Wilkins II, 509); of Edward III, 2nd Sept. 1332 (Rymer, *Foedera* 4th Ed. II, 845).

[5] Cf. § 23.

[6] In the Anglo-Saxon period the ecclesiastical authorities could probably execute their own decrees. (Cf. especially the provisions of the Anglo-Saxon laws as to the collection of church dues and as to the penalties of disobedience.) According to Stubbs, appendix I to the *Report of the Ecclesiastical Courts Commission*, 1883 p. 28, it is not precisely known whether or in what way the bishop, from William I's time, might apply to the sheriff for execution (cf. resolution of the council of Winchester, 1076, below § 60, note 2, and ordinance of William I § 3 in appendix I); but early in Henry III's time it had become at any rate the rule to request of the central (royal) authorities a *breve de excommunicato capiendo* addressed to the sheriff. The forms for the bishop's

prisonment under some of the statutes against heresy.[7] But the general necessity of intervention by the king's officers secured to them, and through them to the king, a means of keeping the procedure of the ecclesiastical courts in conformity with law, whilst it further enabled the secular authorities to thwart any effort of those courts to extend arbitrarily the domain of their competence. Moreover, for the prosecution of crown vassals and the king's servants royal consent was a condition fulfilment of which was expressly required.[8]

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application to the king and the king's orders to the sheriff to seize, or not to seize or to set free are given in Bracton (*circ.* 1230–57), Book V tract. 5 c 11 (*Rer. Brit. Scr.* No. 70; VI, 218 ff.) and c 23 (VI, 370 ff.). Bracton seems, however, in other places to assume that the request for execution was made immediately by the bishop to the sheriff; cf. *l.c.* c 9 § 1 (VI, 204): . . . *si judex ecclesiasticus* (in a cause in which he is not competent) . . . *judicaverit, judicium suum executioni mandare non poterit, quia non est vicecomes nec alius minister, qui in executione facienda ei obtemperet, et si ipse exequi voluerit, locum habebit contra ipsum assisa novae disseysinae, et contra eum qui sequitur, . . .*; *l.c.* c 13 § 6 (VI, 240): *Iudex vero ecclesiasticus si judicaverit de laico feodo, non poterit sententiam demandare executioni, quia si illam demandaverit vicecomiti exequendam, non erit ei parendum.* [Similarly but without express mention of the *vicecomes*, Book IV tract. 1 c 27 § 1; III, 352.]—The kings refused to acknowledge any *obligation* on their part to arrest excommunicated persons. So *e.g.* the king makes answer to the complaint of the clergy (about 1245? Cole, *Documents* 355): to art. 9: *Ad requisicionem Episcoporum consuevit Rex aliquando de gracia speciali cum sibi placuit excommunicatos facere capi et detineri, quousque ab ipsis caucio vel emenda prestita fuisset nec eos liberavit nisi per Episcopos ultra caucionem idoneam seu emendam ab ipsis excommunicatis oblatam maliciose detinerentur. In quo casu scribere solet Rex ministris suis per quos excommunicatos ipsos capi fecerit ut personaliter una cum dictis incarceratis ad Prelatos ipsos accederent. Et si Prelati predicti in presencia ministrorum ipsorum caucionem idoneam seu emendam ab ipsis excommunicatis accipere recusarent, tunc quasi maliciose detentos ipsi ministri eos liberarent, aliter autem per Regem non liberantur;* to art. 10: *Quod excommunicati quandoque non capiuntur ad requisicionem Prelatorum; respondet Rex ut supra, facit enim hoc cum videt expedire qui in hac parte nullo jure se reputat artatum. Quandoque eciam nituntur Prelati jus proprium ipsius Regis per hujusmodi capcionem usurpare.* Cf. also council of *Merton*, 1258 (Wilkins, *Conc.* I, 737 after *Ann. Burton*): *Praeterea cum excommunicati, et de mandato praelatorum secundum consuetudinem capti, et carceri mancipati, aliquando per regem, et quandoque per vicecomitem, aliosque ballivos, sine consensu praelatorum, et satisfactione congrua liberentur, plerumque etiam hujusmodi excommunicati non capiantur, neque de ipsis capiendis literae regiae concedantur;* . . . further, petition of the clergy 1279–85 and king's answer (*Northern Registers; Rer. Brit. Scr.* No. 61, p. 70) c 17. For examples of requests to imprison excommunicated persons see *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77) I, 153, 350. Archbishop Peckham, by letter of 11th Nov. 1286 (*Reg. Epist. Peckham* III, 936), refused to meet the wish of the government, that he should insert the clause *nostrae jurisdictiones* into such letters of request.—On the *breve de haeretico comburendo* cf. § 19, note 11.

[7] Compare § 19. 1 *Hen. VII* (1485) c 2 (printed § 60, note 29) conferred on the bishops the power of executing their own sentences on the clergy for offences against morality.

[8] Custom under William I (§ 4, note 12); *Const. Clarendon*, 1164 c 7 (app. IV); ordinance of Henry II, probably in 1169 (Hoveden I, 232, cf. § 23, note 8) c 7: *Item Lundoniensis et Norewicensis episcopi summoneantur, quod sint coram justitiis regis ad rectum faciendum, quod contra statuta regni interdix-*

Apart from matters which were committed to the ecclesiastical courts, there always remained subject to temporal jurisdiction various relations affecting the constitution of the church.[9]

Moreover, the state exercised direct control to prevent ecclesiastical officials and courts from transgressing the boundaries of their competence as defined by secular law. This control, originally taking the form of royal ordinances upon particular occasions, passed at an early date into the hands of the supreme civil courts and was by them quietly, but persistently and effectually, applied.[10] In certain

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erunt terram comitis Hugonis, et in ipsum sententiam tulerunt; language of Henry II to bishop John of Norwich, 1175–89 (Giraldus, *Vita S. Remigii; Rer. Brit. Scr.* No. 21; VII, 70); complaint of the clergy, 1237 (*Ann. de Burton; Rer. Brit. Scr.* No. 36; *Annales Monastici* I, 256): *Item, dicunt ballivi domini regis quod non possunt vel debent excommunicari dum sunt in servitio domini regis, pro aliquo delicto in balliva sua commisso, et de excommunicatione regi conqueruntur.* Peckham's concession, 1279 (§ 4, note 71). Cf. Friedberg, *De finibus* p. 160, notes 1, 2.—Compare, further, the king's answer to the complaint of the clergy (about 1245? Cole, *Documents* 351), art. 2: *De excommunicacionibus, suspensionibus et interdictis Prelatorum quando per ea feodalia Regis seu libertates ipsius aut ejus jurisdiccionem usurpare presumunt seu execuciones sue jurisdictionis impediunt, arguit eos Rex in foro suo ratione usurpacionis et impedimenti predicti; hoc etiam jure usi sunt Reges Angliae.* The form for the prohibition of the prosecution of a king's servant before an ecclesiastical court for some official act will be found in Bracton (*Rer. Brit. Scr.* No. 70) VI, 186.

[9] Compare § 60.

[10] The *writ of prohibition* to hinder encroachments of special courts, particularly ecclesiastical courts, is mentioned by Glanvilla (*circ.* 1180–90) in two cases, when the proceedings relate to a lay fief and when they affect a right of patronage. The form in the latter case is in Book IV c 13 (printed § 60, note 153); cf. also c 14. The forms of prohibition and of summoning the plaintiff who wrongly pursues before an ecclesiastical court in the matter of a lay fief are in Glanvilla, Book XII c 21: *Rex illis Judicibus ecclesiasticis salutem: Prohibeo vobis ne teneatis placitum in Curia Christianitatis quod est inter N. et R. de laico Feodo praedicti R.; unde ipse queritur quod N. eum trahit in placitum in Curia Christianitatis coram vobis, quia placitum illud spectat ad Coronam et dignitatem meam. Teste etc.;* c 22: *Rex Vicecomiti salutem: Prohibe R. ne sequatur placitum in Curia Christianitatis quod est inter N. et ipsum de laico Feodo ipsius praedicti R. in villa ipsa, unde ipse queritur quod praefatus N. inde eum traxit in placitum in Curia Christianitatis coram Judicibus illis. Et si praefatus R. fecerit te securum de clamore suo prosequendo, tunc pone per vadium et salvos plegios praedictum N. quod sit coram me vel Justiciis meis ea die, ostensurus quare traxit eum in placitum in Curia Christianitatis de laico Feodo suo in illa villa, de sicut illud placitum spectat ad Coronam et dignitatem meam. Teste etc.* Cf. the full account of procedure in prohibitions in Bracton, Book V tract. 5 cc 3 ff. (*Rer. Brit. Scr.* No. 70; VI, 168 ff.).

Throughout the middle ages the manner in which these prohibitions were used by the ecclesiastical courts formed the subject of constant denunciation at synods and of complaints by the clergy to the king. Cf. also the complaint of the English clergy in 1237 (*Ann. de Burton; Rer. Brit. Scr.* No. 36; *Ann. Monastici* I, 254): *Item, quod per solos judices saeculares non determinetur de aliqua causa, utrum debeat dici ecclesiastica vel saecularis.* It was chiefly this instrument which enabled English lawyers, alike in the middle ages and later, under the Stuarts, to repel the attacks of the church in important points.

For the proceedings against ecclesiastical officials who disregarded the prohibition served upon them, compare *e.g.* the complaints of the clergy at the provincial council of *London*, 1257 (Wilkins, *Concilia* I, 726) c 30: *Item in quibus*

circumstances the royal courts had even the right of compelling ecclesiastical officials to take action.[11]

It is true that the person of ecclesiastics was in many cases withdrawn from temporal jurisdiction. Yet, the secular courts retained their competence in civil plaints, a circumstance which was particularly important in view of the fact that prosecution for penal offences, and especially for minor transgressions, was possible by private action for damages. Furthermore, the secular courts always retained as against the clergy, the power of giving judgment in offences against the crown; lastly, from the fourteenth century, there was created in the writ of *praemunire facias* a special mode of civil proceeding against encroachments of ecclesiastics and their secular assistants.[12]

3. *In the matter of military service.*

The prelates like other feudatories were, in principle, bound to do military service in person and to lead their vassals in arms to the king's side; and indeed it seems that in theory the clergy generally were no less obliged to serve than laymen.[13] But personal service

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omnibus casibus et similibus, si judex ecclesiasticus contra prohibitionem regiam procedat, attachiatur comparens coram justiciariis, compellitur judex exhibere acta sua, ut per ea decernant, utrum negotium pertineat ad forum ecclesiasticum, vel seculare. Et si videatur eis, quod pertineat ad forum regium, querelatur judex, qui, si confiteatur se post prohibitionem processisse, amerciatur; si neget, indicitur ei purgatio per judicem secularem ad testimonium duorum vilissimorum ribaldorum. Et si purgare se noluerit, incarceratur, donec justitiariis sacramentum praestiterit corporale, quod non processerit contra prohibitionem; et si facere noluerit, in carcere retinetur similiter actor, si sequatur. *Fleta*, Book VI c 14 § 8: *Et si terra vel aliud in Foro petatur Ecclesiastico et Regia Prohibitio intervenerit ne procedatur ibidem, et Judex procedere timuerit an res de qua agitur mere spiritualis sit necne, tutum est Judici supersedere litemque suspendere donec discussum fuerit a Justiciariis locum Regis tenentibus, utrum licite procedere valeat in causa necne; qui si in causa illicita praesumptuose processerit et inde convincatur, dampna querenti restituere condempnabitur adhibita taxatione Justit., et gaolae committetur donec pro voluntate Regis ab inde redimatur.* For more as to the procedure and the forms employed see Bracton, Book V tract. 5 cc 12 f. (VI, 224 ff.); cf. *l.c.* VI, 234: . . . *si laicus fuerit*, . . . *gaolae committatur sicut praesumptor contra regiam dignitatem ac si crimen laesae majestatis commisisset. Si autem clericus aliquando cum eo mitius agitur de gratia ob reverentiam ordinis clericalis.*

The inquiry, after prohibition, of the ecclesiastical judges to the justiciaries whether cognizance is theirs or not is called *consultatio.* See more in Bracton, Book V tract. 5 c 8 (VI, 196).

[11] By writ of *mandamus, fieri facias de bonis ecclesiasticis, venire facias, quare non admisit* etc.

[12] Compare § 69, near notes 39 ff.

[13] On the Anglo-Saxon period compare Gneist, *Engl. Verfassungsgesch.* § 5 p. 65, note 1.—The transformation of the holdings of the higher clergy into feofs for which service was rendered by placing a given number of men in the field, was probably introduced by William I about 1072 (Round, *Introduction of Knight-Service into England*, reprinted from the *English Historical Review*, July and October 1891, January 1892, pp. 52 sq., against Stubbs, *Const. Hist.* I, 386, note 1 c 11 § 123 and Gneist, *Verfassungsgesch.*). For this view is to be cited, in particular, *Historia Eliensis* (written probably soon after the middle

was seldom exacted, and then only for the defence of the country against invaders;[14] whilst even the duty of sending armed men

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of the 12th cent.; edited by Stewart for the Anglia Christiana, 1848) pp. 274, 276: *Interim rex Scottorum Malcolmus ei occurrens* (1072) *homo suus devenit, jusserat enim tam abbatibus quam episcopis totius Angliae debita militiae obsequia transmitti, constituitque ut ex tunc regibus Anglorum jure perpetuo in expeditione militum ex ipsis praesidia impendi, et nemo licet auctoritate plurima subnixus huic edicto praesumat obsistere . . .*, William II *debitum servitium quod pater suus imposuerat ab ecclesiis violenter exigit, . . . ; Hist. Mon. Abingdon.* (*Rer. Brit. Scr.* No. 2) II, 3: *. . . cum jam regis edicto in Annalibus annotaretur quot de episcopiis, quotve de abbatiis ad publicam rem tuendam milites . . . exigerentur . . . ;* Matth. Paris, *Chron. Maj.* (*Rer. Brit. Scr.* No. 57) II, 6, year 1070: *Episcopatus quoque et abbatias omnes quae baronias tenebant et eatenus ab omni servitute saeculari libertatem habuerant* (only true with a limitation) *sub servitute statuit militari, inrotulans singulos episcopatus et abbatias pro voluntate sua, quot milites sibi et successoribus suis, hostilitatis tempore, voluit a singulis exhiberi.* For a corresponding proceeding of William II against monasteries cf. Giraldus, *De Inst. Princ.* (*Rer. Brit. Scr.* No. 21) VIII, 315. On the customary summons to the higher clergy to present themselves with their retinues for service in the field see Madox, *The History and Antiquities of the Exchequer* 2nd Ed. London, 1769, I, 653 ff.—Compare also writ of Edward I, 20th August, 1297 (printed above, § 4 note 96): *. . . pur ceo qe clercs par fet darmes ne se doivent defendre, . . .*

[14] As examples compare writ of Henry III, 19th July, 1257, to the bishops (Rymer, *Foedera* 4th Ed. I, 362): The king who has summoned the feudal army to a campaign against Wales forbids the holding of a convocation by the archbishop of Canterbury *. . . eo quod singuli tam praelati quam alii, in propriis personis venire debeant ad defensionem coronae, et regni nostri.* Writ of Edward III, 6th July, 1369, to the several bishops (Rymer's *Foedera* 4th Ed. III, 876): *. . . Cum in ultimo parliamento nostro, de assensu vestro, ac aliorum praelatorum, magnatum, et communitatis regni nostri, ordinatum et concordatum fuisset, quod omnes homines, de dicto regno nostro Angliae, tam clerici quam laici, videlicet, quilibet eorum juxta statum, possessiones, et facultates suas, armarentur et arraiarentur, ad proficiscendum, pro salvatione et defensione sanctae ecclesiae et dicti regni, contra hostes nostros, si qui ingredi praesumpserint idem regnum; . . . Vobis in fide et dilectione, quibus nobis tenemini, firmiter injungimus et mandamus, rogando quatinus . . . omnes abbates, priores, religiosos, et alias personas ecclesiasticas quascumque dioecesis vestrae, quacumque dilatione postposita, armari et arraiari, et armis competentibus, videlicet, quemlibet eorum, inter aetates praedictas, juxta statum, possessiones, et facultates suas, muniri, et eos in millenis, centenis et vintenis, poni faciatis, its quod prompti sint et parati ad proficiscendum, una cum aliis fidelibus nostris, contra dictos inimicos nostros, infra regnum nostrum . . .* With the preceding writ, that of Edward III to the several bishops, dated 16th June, 1372 (Rymer, *Foedera* 4th Ed. III, 947 and Wilkins, *Concilia* III, 91) agrees almost verbatim. Writ of Edward III to the bishop of Winchester, 20th July, 1373 (Rymer, *Foedera* 4th Ed. III, 988): as a landing of the enemy near Southampton was impending, let the bishop forthwith levy the *clerus*, arm them and send them to the adjacent parts of the coast. Writ of Richard II, 25th July, 1377, to the various archbishops and bishops (Rymer, *Foedera* 3rd Ed. III, pt. III p. 64): the French having burned different places on the coasts and a further attack by them being impending, the king has sent commissions into the counties to levy all capable of bearing arms—*ad Arraiandum, et Arriari et Armari faciendum;* the prelates and the *clerus* are bound to lend help in opposing the enemy; the bishops are accordingly to arm all abbots, priors, monks and other ecclesiastical persons of their dioceses, to levy them, and to divide them into *Millena, Centena and Vintena*, that they may be ready at the king's command to march forth to war *infra dictum Regnum*

into the field became liable towards the end of the twelfth and during the thirteenth century to many exceptions, partial or complete immunity being granted in the course of time.[15]

4. *In the matter of taxation.*

Even in the Anglo-Saxon period ecclesiastical possessions were not free from the heavy civil burdens which fell on all landed property.[16] But more extensive contributions to the national treasury began under the financial administration of the Normans, who well understood how to turn all the rights of suzerainty into means of extracting money.

The prelates were called on for *auxilia* and *scutagia* to the same extent as the other feudatories. These *auxilia*, or aids, were originally payments to the overlord on certain important occasions, whilst scutages[16a] were regarded as a discharge of the obligation to military service deduced from the feudal relation. The old land tax (traced back to the Danegeld) which was raised from time to time was, under William II and afterwards, imposed on the holdings of the church.[17] With these methods of taxation was fused in the course of the twelfth and thirteenth centuries a new tax, reckoned by fractions of the income. In the thirteenth century the king's power to impose such burdens arbitrarily was restricted and made dependent on the co-operation of the national assembly. The taxation of the prelates in respect of the incomes from their feuds and the taxation generally of the clergy in respect of their temporal possessions and of their income from temporal

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nostrum. An example of the execution of a writ (1386) and the levying of the clergy of the diocese of York against the French and their allies will be found in *Northern Registers* (*Rer. Brit. Scr.* No. 61) 421. A similar writ of Henry IV, 27th Jan. 1400, upon occasion of a threatening French invasion, in Rymer, *Foedera* 3rd Ed. III, pt. IV p. 176. Similar writ of Henry V, 28th May, 1415, to the several bishops on his approaching departure for the French war, in Rymer, *Foedera* 3rd Ed. IV, pt. II p. 123. Writ *per concilium*, 6th July, 1418 (during the king's absence in France) to the two archbishops directing them to levy and arm the clergy of their provinces, in Rymer, *Foedera* 3rd Ed. IV, pt. III p. 57. Cf. from later times the order of the privy council (1588) mentioned in the letter of the archbishop of Canterbury in Wilkins, *Concilia* IV, 336. [Examples of the putting in the field of armed men by the clergy, not themselves called out, in Rymer, *Foedera* 4th Ed. I, 607 (20th May, 1282, for a war with Wales), II, 1072 (16th Feb. 1339, to repel the French).]

[15] Gneist, *Eng. Verfassungsgesch.* § 25*a*, note 1, adduces the following examples: the bishop of Lincoln, who under Henry II had to put 60 knights in the field, was under Edward I reduced to 5; the bishop of Bath from 20 to 2. According to Round, *l.c. Reprint* pp. 18, 49, up to 1166 the thirty-nine bishops and abbots of more important monasteries had to furnish 784 knights, the secular vassals about 4000.—11 *Henry VII* (1495) c 8 and 19 *Henry VII* (1503/4) c 1, acts touching the service in war to be rendered to the king, are stated therein to be not applicable to 'spiritual persons.'

[16] According to rule they too had to pay the *trinoda necessitas* (*Brycgbote*, *Burhbote*, *Fyrd*). Cf. Gneist, *Eng. Verfassungsgesch.* § 5 p. 63, note *a*.

[16a] The first known mention of scutage as a recurring tax is in a document of Henry I, 1127. Round, *l.c. Reprint* p. 33.

[17] Compare § 4, note 21.

sources was thenceforth subject to the vote of the national assembly, at which the prelates and, for a time, the other clergy attended. The taxation of income from ecclesiastical sources was, at the end of the thirteenth century, opposed by the clergy. After that their resistance had been overcome by Edward I and after some further struggles under Edward II, the prelates and the lower clergy granted in their convocations state taxes, reckoned by fractions of their income from ecclesiastical sources.[18]

Besides these main sources of revenue the king had certain smaller means of supply which stand in some sort of relation to the constitution of the church,[19] in especial the usufruct of bishoprics and abbacies during vacancy,[20] as also dues from the effects of deceased bishops.[21] Lastly it is to be mentioned that the king

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[18] Cf. § 4, near notes 72 ff. and § 54, near notes 57 ff.

[19] *E.g.* a right to the tithes from extra-parochial places; recognized as early as Edward I. For more on this right see Phillimore, *Eccles. Law* 1487.

[20] Cf. § 41.

[21] According to the law of the church (cf. *e.g.* Gratian, *Decretum* II *caus.* XII *quaest.* V) bishops might not dispose by will of their property in so far as it was acquired from ecclesiastical sources; it reverted to the church.—The kings of England obtained the right of giving their assent to a testamentary disposal by the bishops of their effects. Cf. the charter of Stephen, 1136 (app. II): *Si quis episcopus vel abbas vel alia ecclesiastica persona ante mortem suam rationabiliter sua distribuerit vel distribuenda statuerit, firmum manere concedo. Si vero morte praeoccupatus fuerit, pro salute animae ejus ecclesiae consilio eadem fiat distributio.* According to Coke, *Inst.* IV, 338, many reports from the days of Henry III and Edward I show that the kings then exercised the right. Cf. also in *Annal. Burton* (*Rer. Brit. Scr.* No. 36; *Annales Monastici*) I, 254 the petition handed by the English clergy to legate Otho in 1237 that he might deliver it to the king: *Item (petunt) ne testamentum episcoporum et aliorum impediatur.* Resolution of the council of London, 1257 (Wilkins, *Concilia* I, 724): *Item quod dominus rex non impediat testamenta episcoporum, nec extendat manum ad bladum, quod seminaverint, vel ad alia bona episcoporum defunctorum.* Complaint of the clergy at the same council (Wilkins, *Concilia* I, 726) c 23: . . . *dominus* . . . *rex non permittit executores testamentorum eorundem episcoporum de bonis ipsorum administrare, quousque causa cognita ipsius facinoris, gratiam mereantur super his obtinere.* According to Coke, *l.c.*, who finds his oldest instance in the time of Edward II, but thinks that the usage is older (cf. *e.g.* the documents from the years 1227–33 in *Rer. Brit. Scr.* No. 21, VII, 230 f.), the king required as an equivalent for his consent certain dues from the estates of dead bishops: 1. the best horse with saddle and bridle; 2. a cloak with a cape; 3. goblet with lid; 4. basin and ewer; 5. golden ring; 6. the bishop's hounds. To obtain these dues, the exchequer issued on the death of the bishop an order to take possession of the effects.—A *Spolienrecht* (right of the king to all the personalty of a deceased bishop), such as existed in many countries of Europe already in the twelfth century, seems never to have been exercised in England proper. As to the king's rights in case a bishop died intestate cf. § 60, near notes 118 ff. In Scotland (see Robertson, *Ecclesiae Scoticanae statuta* I, 100, note 1) this *Spolienrecht* existed even before the middle of the twelfth century. The papal prohibition was recalled by the pope in 1282. Edward I, from his appearance in Scotland as suzerain, exercised this right there. (Cf. the answer of Edward I to the petition of the English clergy, 1279-85 [*Rer. Brit. Scr.* No. 61 p. 75] c 13: . . . *in Scotia episcopi non testantur, sed rex occupat omnia bona sua.*) In 1367–71 David II with the consent of parliament renounced the right, as did his successor after him. In connexion herewith were issued corresponding papal bulls. Nevertheless the right was again exercised

claimed for himself and his officers free quarters, and rights of purveyance and prisage,[22] and that he burdened spiritual corporations by granting pensions and corodies.[23]

5. *As to rights of appointment.*

The Norman kings derived from the Anglo-Saxon period an almost unlimited right of appointment in respect to the more important bishoprics and a large number of other high offices. A certain number of the abbots were elected, as a consequence of special privileges, by the convent, and apparently the case was the same with some less important bishoprics.[24] The investiture by the king with ring and staff was, owing to the opposition led by Anselm, surrendered by Henry I in 1107,[25] the king's power of appointment at the latest by John in 1214.[26] Even then the necessity of royal assent still survived, and the king retained considerable influence on all elections inasmuch as he had to be approached for leave to elect, and it was usual that in granting the leave he further designated the person acceptable to himself.[27]

Apart from this influence in filling the highest ecclesiastical offices the king enjoyed the right of investing prelates with the property appertaining to the see. Anselm had struggled for the dissolution of the feudal bond, but in vain.[28] At the end of the twelfth century the bishops, it is true, did not do feudal homage *after* consecration, they only took the oath of fealty; they seem, however, for some time longer to have done homage after election but before consecration.[29] At any rate, the prelates remained obliged to dis-

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and not finally surrendered until 1449–50 by renunciation of the king in parliament. For the continent of Europe see the authorities in Richter, *Kirchenrecht* § 316, note 12.—On the heriot which in Anglo-Saxon times even bishops paid the king, compare Gneist, *Engl. Verfassungsgesch.* § 2, note 4*a*.

[22] The undue extension of these rights was checked by 3 *Ed. I* (1275) *Stat. of Westminster* art. 1, 2 *Ed. II* (1309) *De prisis injustis non capiendis a Viris Ecclesiasticis seu aliis*, 9 *Ed. II* st. 1 (1315/6) *Articuli Cleri* c 11, 10 *Ed. II* (1316) *De statuto pro Clero inviolabiliter observando*, 14 *Ed. III* (1340) st. 4 c 1 and by later enactments. Cf. also Vocke, *Geschichte der Steuern des britischen Reichs*, Leipzig, 1866, pp. 130 ff. Stubbs, *Const. Hist.* II, 564 ff. c 17 § 279.

[23] For a restriction of the king in assigning pensions and corodies (it is a case of applying the *preces regiae*) cf. 9 *Ed. II* st. 1 (1315/6) *Articuli Cleri* c 11, also 1 *Ed. III* (1326/7) st. 2 c 10: *Et por ce qe Ercevesqes, Evesqes, Abbees, Priours, Dames de religion et autres ount este avant ces houres grandement grevez par priers des Roys, qe lor unt prie par grandes manaces pur lour Clerks et autres lor servantz, por grosses empensions, provendes, Eglises et Corodies, issint qils ne poent rien doner ne faire a ceux qe lour avoient servi, ne a lor amys, a grant charge et damage de eux; Le Roi ne voet desore prier, mes la ou il devera.*

[24] This is the view of Stubbs, *Const. Hist.* I, 149 c 6 § 57. Cf. above, § 2, near notes 10 ff.

[25] Cf. § 4, note 23.

[26] Cf. § 4, notes 53, 65.

[27] By letters missive.

[28] Cf. § 4, note 24.

[29] *Const. Clarendon* (append. IV) c 12: . . . *faciet electus homagium et fidelitatem domino regi, sicut ligio domino, de vita sua et de membris, et de honore suo terreno, salvo ordine suo, priusquam consecratus sit.* Glanvilla,

charge all the duties arising from the feudal relation. The king as feudal lord continued to be the immediate superior of the bishops; he could, in particular, claim their services in affairs of state, and possessed in the right of confiscature for breach of fealty an exceedingly effective means of constraint.

Numerous offices in the cathedral chapters and among the inferior clergy were filled by the king as patron. The administration of the benefices of prelates during vacancy, like the administration of other fiefs during the minority of the heir and in other cases, placed temporarily at the king's disposal the fruits of benefices the right of presentation to which belonged to the owners of the land.[30] Clerical corporations were also frequently compelled by 'royal request' to exercise their rights of presentation in favour of persons denoted by the king.[31]

Lastly, the king had been regarded from early times as 'patron paramount' of all benefices in England,[32] in which capacity he had an implied right to present in various cases when for any reason no duly qualified patron was found.

6. *As to the acquisition of property by the church.*

The king interfered with the acquisition of property by the church in two ways: he restricted appropriations (the absorption of independent livings by the great ecclesiastical corporations), and the accumulation of landed property *in mortua manu*.

A royal permit for every appropriation seems to have been

Book IX c 1: . . . *Episcopi vero consecrati homagium facere non solent domino Regi etiam de baroniis suis, sed fidelitatem cum juramentis interpositis ipsi praestare solent. Electi vero in episcopos ante consecrationem suam homagia sua facere solent.* Bracton (*Rer. Brit. Scr.* No. 70) I, 622: . . . *dum tamen electi in episcopos post consecrationem homagium non faciant, quicquid fecerint ante, sed tantum fidelitatem.* — Cf. *Fleta*, Book III c 16 §§ 11–13; further, above § 20, note 22.

[30] The so-called *presentementz par le Roi en autri droit par auncien title* which took place up to the end of the 15th century were abuses. They were prohibited and legal obstacles raised against them by 25 *Ed. III* (1351/2) st. 6 *Ordinatio pro Clero* cc 1 and 3; 13 *Ric. II* (1389/90) st. 1 c 4; 4 *Hen. IV* (1402) c 22. But the first of these acts contains a reservation not touched by later ones: *sauvant au dit Roi et a ses heirs toutz tiels presentementz en autri droit de tout son temps et de temps avenir.*

[31] Compare above, notes 23, 27. Complaint of the clergy in 1257 (Wilkins I, 726) c 3: *Item cum electiones in ecclesiis cathedralibus seu conventualibus debeant esse liberae, tot et tales preces regales interveniunt, quibus electores perterriti, saepius divinae humanam praeferunt voluntatem. Eodem modo fit de ecclesiis vel praebendis, ad opus regalium clericorum, cum eas vacare contingit.* Complaint in 1309 (Wilkins II, 321): *Item si vacet aliqua dignitas, ubi electio est facienda, petitur, quod electores libere possint eligere absque incursione timoris a quacunque potestate seculari, et quod cessent preces et oppressiones in hac parte.*

[32] Cf. *e.g.* 25 *Ed. III* (1350/1) st. 4 *Stat. de Provisoribus*: . . . *Esglise, provende, ou autre benefice qe sont del avowerie des genz de seinte esglise, dont le Roi est avowe paramount inmediat* . . . 'Immediat' supplies the opposition to the case of lay patronage.

necessary from the end of the thirteenth century.[33] By concerning himself to limit appropriations, the king worked in the same direction as the authorities of the church.

On the other hand, the restriction of the acquisition of land *in mortua manu* could only be effected by conflict with the church. The endeavours of the sovereign in this respect were aided by the circumstance that arbitrary gifts of land to the church involved a wrong to the private rights of the feudal lord, depriving him, for example, of the chance of an escheat, as also of a number of dues and services to which the clergy by the law of the land were not subject or from which they were able in practice to escape. Even as early as 1164 the constitutions of Clarendon contained the proviso that for gifts in perpetuity of the king's feud the royal consent was requisite. The generalization of this proviso and the elaboration of rules in regard to it took place in the enactments of the thirteenth century.[34]

§ 28.

B. THE SUPREMACY OF THE SOVEREIGN AS INTRODUCED BY THE REFORMATION.

From the end of the twelfth century, at latest, down to the reformation no claim was ever made by any king or in any resolution of parliament that England was in purely ecclesiastical matters independent of the pope. Such a contention would have been in too striking conflict with the actual circumstances of the case. Many of the resolutions frequently adduced as instances of such declarations of independence prove what they are not meant to prove, for they confine the independence claimed to temporal or royal rights; in others this limitation is to be supplied as being, beyond all doubt, intended.[1] All these resolutions are merely in repudia-

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[33] Conditions for the granting of the permit, apparently to be connected with mortmain legislation (cf. the king's licence [1291?] mentioned in *Rer. Brit. Scr.* No. 45 p. liii, note 3) are laid down in 15 *Ric. II* (1391) c 6 and 4 *Hen. IV* (1402) c 12.—15 *Ric. II* c 6 refers to the necessity of the licence as something already existing; 4 *Hen. IV* enacts, among other things, the nullity of all appropriations without licence since 1 *Ric. II.*

[34] On the other regulations see § 4, note 68. Relevant also are 7 *Ed. I* (1279) *de Religiosis;* 13 *Ed. I* (1285) *St. Westminster* II c 32 and later acts.

[1] Relevant especially are: Bracton (*circ.* 1230–57) Book V tract. 5 c 15 § 2 (*Rer. Brit. Scr.* No. 70; VI, 218): . . . *sicut dominus papa in spiritualibus super omnibus habeat ordinariam jurisdictionem, ita habet rex in regno suo ordinariam in temporalibus.* Similarly c 19 § 2 (VI, 296).—Letter of the barons assembled in the parliament of Lincoln, 1301, for themselves and *tota communitas*, to the pope (§ 4, note 69).—Resolution of parliament of 1366 against the pope's claim to tribute (§ 4, note 117).—16 *Ric. II* (1392/3) c 5 *Stat. of Praemunire*, preamble: . . . *et ensy la Corone Dengleterre qad este si frank de tout temps qe le nad hieu nully terrien soveraigne, mes immediate subgit a Dieu en toutes choses tuchantz la regalie de mesme la Corone et a nully autre, seroit submuys a Pape*, . . .—Articles of accusation before parliament at the deposition of Richard II, 1399 (*Rot. Parl.* III, 419) No. 10: *Item quamvis Corona Regni Anglie et Jura ejusdem Corone, ip-*

tion of papal pretensions to decide in questions of patronage, to enjoy suzerainty and to exercise powers deduced therefrom.

When Henry VIII set himself to enforce a right to supremacy in ecclesiastical as well as secular things, he encountered at first the resistance of the clergy. After considerable discussion both convocations recognized him unconditionally as supreme lord of the English clergy; but a supreme head (*i.e.* as official superior), only in so far as the law of Christ allowed.[2] This limiting clause was, however, afterwards silently suppressed, first in a petition of the lower house of parliament, converted into the act, 25 *Hen. VIII* (1533/4) c 21,[3] then in the first supremacy act 26 *Hen. VIII* (1534) c 1.[4 5]

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sumque Regnum, fuerint ab omni tempore retroacto adeo libera, quod Dominus Summus Pontifex, nec aliquis alius extra Regnum ipsum, se intromittere debeat de eisdem, tamen praefatus Rex ad roborationem Statutorum suorum erroneorum supplicavit Domino Pape, quod Statuta in ultimo Parliamento suo ordinata confirmaret. Super quo dictus Rex Litteras Apostolicas impetravit, in quibus graves censure proferuntur contra quoscumque qui dictis Statutis in aliquo contravenire presumpserint. Que omnia contra Coronam et Dignitatem Regiam, ac contra Statuta et Libertates dicti Regni tendere dinoscuntur.—For the fact that the supreme judicial power of the pope in purely ecclesiastical matters was not disputed at this time, see § 23, note 11. —Cf. also the authorities given to ambassadors from the English kings to newly elected popes. Authority of Henry VI, 16th May, 1459 (Rymer, *Foedera* 3rd Ed. V, part II p. 84: . . . *Itaque, in ejusdem interioris nostrae Devotionis suae Sanctitati expressiorem declarationem, vos Oratores nostros et Nuncios speciales ad praestandum Obedientiam dignam, atque debitam Devotionem, Sanctissimo in Christo Patri Pio Papae Secundo, vero et indubitato Christi Vicario, Exhibendam Constituimus,* . . .) and of Richard III, 16th Dec. 1484 (*l.c.* V pt. III p. 157: . . . *Dantes* . . . *potestatem* . . . , *pro Nobis et Nomine nostro, Devotionem, quam in Sanctam Sedem Apostolicam ac ipsius Praesidentem modernum Sanctissimum Dominum nostrum Dominum Innocentium Papam Octavum gerimus et habemus, Filialemque et Catholicam Obedientiam a Regibus Angliae Romanis Pontificibus ab antiquo debitam et praestari consuetam, pro Nobis* . . . *Exhibendi, Praestandi, et Faciendi,* . . .).

[2] Grant of a sum of money to the king by the southern convocation 22nd March, 1531 (Wilkins III, 742). In brackets: (*cujus* [*scil. cleri Anglicani*] *singularem protectorem unicum et supremum dominum, et quantum per Christi legem licet, etiam supremum caput ipsius majestatem recognoscimus*). In May, 1531, there was a grant by the northern convocation with the same clause (Wilkins III, 744).

[3] s 1: . . . *It may therfore please your* . . . *Majestie* . . ., *for asmoche as your Majestie is supreme hede of the Church of Englonde, as the Prelates and Clergie of your Realme representyng the seid churche in their Synodes and convocacions have recognysed,* . . .

[4] *An Acte concernynge the Kynges Highnes to be supreme heed of the Churche of Englande and to have auctoryte to refourme and redresse all errours heresyes and abuses yn the same.* The essential provisions of this act run:—

Albeit the Kynges Majestie justely and rightfully is and oweth to be the supreme heed of the Churche of England, and so is recognysed by the Clergy of this Realme in theyr convocacions; yet neverthelesse for corroboracion and confirmacion therof . . . *be it enacted by auctorite of this present Parliament that the Kyng our Soverayn Lorde his heires and successours Kynges of the Realme shalbe takyn acceptyd and reputed the onely supreme heed in erthe of the Churche of England callyd Anglicana Ecclesia, and shall have and enjoye annexed and unyted to the Ymperyall Crowne of the Realme*

From this time onward Henry VIII exercised his right of supremacy. He strengthened his position by penal enactments[6] and by the introduction of a supremacy oath.[7] In like manner the supremacy was upheld by the regency during the minority of Edward VI. In consequence of the reaction under Mary the position which Henry VIII had won for the crown was, by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8[8], wholly abandoned, and a return was made to the attitude which the crown had taken towards the church in the middle ages. Finally, Elizabeth, without reviving in form the supremacy acts of Henry VIII, adopted instead in her own first supremacy act new provisions which differed but very slightly from the corresponding clauses in Henry's legislation.[9] The supremacy

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aswell the title and style therof, as all Honours Dignyties prehemynences jurisdiccions privileges auctorities ymunyties profitis and commodities to the said dignytie of supreme heed of the same Churche belongyng and apperteynyng: And that our said Soveraigne Lorde his heires and successours Kynges of this Realme shall have full power and auctoritie from tyme to tyme to visite represse redresse reforme ordre correct restrayne and amende all suche errours heresies abuses offences contemptes and enormyties what so ever they be, whiche by any maner spirituall auctoryte or jurisdiccion ought or maie lawfullye be reformyd repressyd ordred redressyd correctyd restrayned or amendyd . . .

Henry VIII had also obtained in 1531 declarations from the clergy individually, in which the limiting addition, 'in so far as the law of Christ allowed,' was left out.

[5] In harmony herewith in the course of 1534 the northern and southern convocations and the universities of Oxford and Cambridge gave a negative answer to the king's question: *An Romanus pontifex habeat aliquam majorem jurisdictionem collatam sibi a Deo in S. Scriptura in hoc regno Angliae, quam alius quivis externus episcopus?* (Wilkins, *Concilia* III, 769, 771, 775, 782).

[6] First by what is called the second supremacy act or 'Treason Act' 26 *Hen. VIII* (1534) c 13 *An Acte wherby divers offences be made high treason . . .* [it was repealed by 1 *Ed. VI* (1547) c 12 s 1: *An Acte for the Repeale of certaine Statutes concerninge Treasons, Felonyes* etc. and not again revived]; then, cf. in particular 28 *Hen. VIII* (1536) c 10 *An Act extynguysshing the auctoryte of the Busshop of Rome.* [Repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 4 and not revived but replaced by 1 *Eliz.* (1558/9) c 1 ss 9–18.]

[7] First by 28 *Hen. VIII* (1536) c 10 s 6 (oaths of *allegiance* had been introduced earlier).

[8] *An Acte repealing all Statutes Articles and Provisions made against the See Apostolick of Rome since* 20 *Hen. VIII, and also for thestablishment of all Spyrytuall and Ecclesiasticall Possessions and Hereditamentes conveyed to the Layetye.* In ss 2–7 a series of acts (specified) of Henry VIII (among them his first supremacy act) are repealed, as also part of an act of Edward VI. Then s 8 is general: . . . *that all clauses sentences and articles of every other Statute . . . made sithence* 20 *Hen. VIII againste the supreme auctho-ritie of the Popes Holines or Sea Apostolike of Rome, or conteining any other matter of the same effect onely, that is repealed in any of the Statutes aforesaid, shall be also by auctoritee hereof from hensforthe utterly voide . . .*

[9] s 1 repeals 1 & 2 *Phil. & Mar.* c 8 in those respects with which we are here concerned. (In another respect that act is upheld by s 16.) According to s 4 the acts repealed by 1 & 2 *Phil. & Mar.* c 8 remain without force in so far as they are not revived by the present statute. s 7 then determines the negative side of the king's supremacy by excluding all foreign superiority. s 8 enacts positively . . . *that suche Jurisdictions Privileges Superiorities and Preheminences Spirituall and Ecclesiasticall, as by any Spirituall or Ecclesiasticall Power or Aucthorite hathe heretofore bene or may lawfully*

of the king to the extent fixed in Elizabeth's reign has ever since been acknowledged.[10]

The title of supreme head of the English church had been given to the king in the first supremacy act of Henry VIII;[11] and thenceforth the king employed it.[12] The titles to be borne by the king were subsequently fixed by the statute, 35 *Hen. VIII* (1543/4) c 3, and in it again the title of supreme head of the church was retained.[13] Mary made, except in some few exceptional cases,[14] no use of it.[15] By 1 & 2 *Phil. & Mar.* c 8 the two opposing enactments were repealed, and, whilst no new title was ordained, it was declared that it had been within the queen's free will whether she should use her titles or not, and that accordingly all documents wherein this title had not been employed should, nevertheless, be valid.[16] Elizabeth, who revived by statute the supremacy to the extent practically in which it had existed under Henry VIII and Edward VI, yet took into account the offence which the title supreme head of the church had given to many. She, therefore, did not resuscitate the title, but escaped it by the phrase 'supreme governor of this realm . . . in all spiritual as well as in all temporal things.'[17]

There have been frequent disputes as to what is included or

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be exercised or used for the Visitacion of the Ecclesiasticall State and Persons, and for Reformacion Order and Correccion of the same and of all maner of Errours Heresies Scismes Abuses Offences Contemptes and Enormities, shall for ever by aucthorite of this present Parliament be united and annexed to the Imperiall Crowne of this Realme; . . .

[10] The right, given the king in s 8 of the last-mentioned act, to appoint commissions for the exercise of such powers was afterwards abolished. Cf. § 30.

[11] Compare above, note 4.

[12] In 1 & 2 *Phil. & Mar.* c 8 s 18 it is stated that the title *Supreme Hedd of the Churche of Englande and of Irelande* (or one of the two) has been in use since 3rd Nov. 26 *Hen. VIII* (1534).—Cf. also (quoted in Stubbs, *Hist. Append.* to *Report of Eccles. Courts Comm.* 1883): *Memorandum quod quinto decimo die Januarii anno regni regis Henrici octavi vicesimo sexto* (*i.e.* 1535), *idem dominus rex . . . decrevit et ordinavit stilum et titulum suum regium, tam in chartis et literis suis patentibus quam in brevibus quibuscunque in omnibus et singulis curiis suis infra regnum suum Angliae et infra omnia et singula dominia et terras ei subjecta fieri et scribi deinceps sub ea quae sequitur forma, videlicet: Henricus octavus Dei gratia Angliae et Franciae rex, fidei defensor et dominus Hiberniae, et in terra supremum caput Anglicanae Ecclesiae.*

[13] *The Bill for the Kinges Stile.* The full title is to run: *Henry VIII by the grace of God Kyng of Englonde Fraunce and Irelande Defendour of the faithe, and of the Churche of Englonde, and also of Irelande in earthe the supreme Hedde.*

[14] Collier, *Eccles. Hist., Record* lxviii *bis*, prints after *Regist. Bonner* fol. 346 a licence to preach, dated 20th Nov. 1553, and given by the queen in accordance with her ordinance of 18th Aug. 1553. It begins: *Maria* etc. . . . *supremum caput, dilecto subdito nostro A. B . . . salutem.*

[15] It is stated in 1 & 2 *Phil. & Mar.* c 8 s 19 that she had since her accession left out the title supreme head of the church.

[16] s 19 of act just cited.

[17] This designation is contained in the supremacy oath 1 *Eliz.* c 1 s 9. Oath is to be taken . . . *that the Quenes Highnes is thonelye supreme Governour of this Realme and of all other her Highnes Dominions and Countreis, as well in all Spirituall or Ecclesiasticall Thinges or Causes as Temporall, . . .*

involved in the supremacy. Even the first supremacy act of Henry contains in general terms an enumeration of the rights which are to be regarded as implied therein. These are 'honours, dignities, pre-eminences, privileges,' etc. but, as the essence of the whole, the right of exercising every form of *spiritual authority or jurisdiction* for certain purposes stated in the enactment. From the list of purposes specified it is plain that the king from the outset claimed only what is called the *potestas jurisdictionis* (in the sense in which the phrase is employed in Roman catholic ecclesiastical law), not the *potestas ordinis* as well.[18] In spite of the general expression 'authority,' used in the statute, there was not ascribed to the king therein the ecclesiastical power which springs from consecration. On the other hand, with the 'jurisdiction' which passed to him passed also the sovereign power to make ordinances touching spiritual matters and the right to supreme control in ecclesiastical administration.

This principle was observed, on the positive as well as on the negative side, in all the proceedings of Henry VIII and Edward VI's reign.

That the supremacy did not imply *potestas ordinis* is expressly acknowledged by Henry VIII in a letter of 1533 to Tunstall, bishop of Durham.[19] When in Henry's reign and in his successor's the

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[18] On the difference between the two see Richter, *Kirchenrecht* § 91. His § 95 deals with the difference, contained in German protestant professions of faith, between the rights of governments and a power of the keys attaching to the church, this power being divided into *potestas ordinis* and *potestas jurisdictionis*. The *potestas jurisdictionis* in the protestant sense is much narrower than in the Roman catholic. For the protestant conception the chief references are:—

Confessio Augustana (1530) art. XXVIII (abusus VII): . . . *Sic autem sentiunt* (the protestants), *potestatem clavium seu potestatem Episcoporum, juxta evangelium, potestatem esse seu mandatum Dei praedicandi evangelii, remittendi et retinendi peccata, et administrandi sacramenta . . Porro secundum evangelium, seu, ut loquuntur, de iure divino, nulla jurisdictio competit Episcopis ut Episcopis, hoc est his, quibus est commissum ministerium verbi et sacramentorum, nisi remittere peccata, item cognoscere doctrinam, et doctrinam ab evangelio dissentientem rejicere, et impios, quorum nota est impietas, excludere a communione ecclesiae, sine vi humana, sed verbo.*

Melanchthon, *Apologia Confessionis Augustanae* (1531) art. XXVIII § 12: *Et placet nobis vetus partitio potestatis, in potestatem ordinis et potestatem jurisdictionis. Habet igitur Episcopus potestatem ordinis, hoc est ministerium verbi et sacramentorum, habet et potestatem iurisdictionis, hoc est auctoritatem excommunicandi obnoxios publicis criminibus, et rursus absolvendi eos, si conversi petant absolutionem . . .*

[19] Printed in Wilkins, *Concilia* III, 762: . . . *so as in all these articles concerning the persons of priests, their laws, their acts, and order of living, forasmuch as they be indeed all temporal, and concerning this present life only, in those we (as we be called) be indeed in this realm 'Caput'; and because there is no man above us here, be indeed 'Supremum caput.' As to spiritual things, meaning by them the sacraments, being by God ordained as instruments of efficacy and strength, whereby grace is of his infinite goodness conferred upon his people; forasmuch as they be no worldly nor temporal head, but only Christ . . . by whose ordinance they be ministred here by mortal men . . . ; who for the time they do that, and in that respect, 'tanquam ministri versantur in his, quae hominum potestati non subjici-*

bishops were constrained to beg royal permission for the exercise of their ecclesiastical powers of jurisdiction, in the letters patent granted them the reservation was made that they might continue to exercise in their own names such powers 'as they derived from Holy Scripture.'[20] Similarly in 1 *Ed. VI* (1547) c 2 precise distinctions are drawn between the documents the bishops are to set forth, in form as well as fact, under the king's name and those to be issued under their own names.[21] The distinctions applicable in the case of the several documents are not, it is true, in detailed agreement. But this is attributable to the fact that in regard to many episcopal actions it is doubtful whether they emanate from the *potestas jurisdictionis* or the *potestas ordinis*. The underlying principle of discrimination is, however, identical in all the distinctions drawn.

On the positive side, both Henry VIII and Edward VI laid claim to the right of supreme control in ecclesiastical administration. This was from the outset clearly indicated by the appointment of Crumwell as vicar general; and though on Crumwell's death the office was not refilled, that did not signify a surrender of the control; but the king thenceforth in exerting it availed himself of other officials, and especially of his privy council. In like manner, the government of Henry VIII as well as that of Edward VI asserted the king's right to issue independently temporary ordinances touching spiritual matters. In both reigns the right was chiefly exercised by means of what were called 'injunctions.'

The legal situation established by the legislation of Henry and Edward was as described. It is not, however, of any direct significance at the present time; for the enactments which determined it were repealed under Mary and not afterwards revived. The statutes of Elizabeth's reign are the only ones which now, in this matter, are in force.

Beyond doubt, the rights deducible from the *potestas ordinis* were not conferred on the crown in Elizabeth's day any more than under her predecessors. This follows from the enumeration in her first supremacy act of the purposes for which ecclesiastical power is to be exerted by the king.[22] Claim to *potestas ordinis* on the king's part is, furthermore, distinctly excluded in an appendix to the injunctions of 1559,[23] (declared by 5 *Eliz.* [1562/3] c 1[24] to be authoritative

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untur; in quibus si male versantur sine scandalo, Deum ultorem habent, si cum scandalo, hominum cognitio et vindicta est' . . .

[20] Cf. § 6, notes 23 and 41.

[21] Cf. § 6, note 42.

[22] Cf. above, note 9.

[23] *An admonition to simple men deceived by malicious* (Cardwell, *Doc. Ann.* I, 199): . . . *her majestie forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons, which most sinisterly and maliciously labour to notify to her loving subjects, how by the words of the said oath* (of supremacy) *it may be collected, that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine service in the church; wherein her said subjects be much abused by such evil disposed persons. For certainly her majesty neither doth nor ever will challenge any authority, than that was challenged and lately used by* . . . *King Henry VIII and King Edward VI, which is, and was of ancient*

in the interpretation of the supremacy oath),[24] as also in the thirty-nine articles.[25]

The only question which arises is *what* powers were *positively* vested in the crown in virtue of the supremacy. Did the power of ecclesiastical jurisdiction accrue, as being the right of supreme ecclesiastical control and government? Or was it a purely temporal power over ecclesiastical persons and property?

The first supremacy act of Elizabeth most explicitly bestows on the sovereign ecclesiastical power, and indeed in almost the same words as the first supremacy act of Henry VIII. But in opposition to this view, it might seem that the injunctions of 1559, and consequently the second supremacy act of Elizabeth, referring as it does

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time due to the imperial crown of this realm: that is, under God to have the sovereignty and rule over all manner of persons born within these her realms, dominions and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them . . .

[24] *An Acte for thassurance of the Quenes Majesties Royall power over all Estates and Subjectes within her Highnes Dominions.*

s 11: *Provided also, that thothe expressed in the sayd Acte made in the sayd first yere shalbe taken and expounded in suche forme as ys setfoorthe in an Admonicion annexed to the Quenes Majesties Injunctions published in the first yere of her Majesties Reigne; that is to saye, to confesse and acknowledge in her Majestie her Heires and Successours, none other aucthoritee then that was chalenged and lately used by the noble King Henry Theight and King Edwarde the Syxte, as in the sayd Admonicion more playnly maye appeare.*

[25] Art. 37: *. . . Cum Regiae Maiestati summam gubernationem tribuimus, quibus titulis intelligimus, animos quorundam calumniatorum offendi, non damus Regibus nostris, aut verbi Dei, aut Sacramentorum administrationem, quod etiam iniunctiones ab Elizabetha Regina nostra, nuper editae, apertissime testantur. Sed eam tantum praerogativam, quam in sacris scripturis a Deo ipso, omnibus piis Principibus, videmus semper fuisse attributam, hoc est, ut omnes status, atque ordines fidei suae a Deo commissos, sive illi ecclesiastici sint, sive civiles, in officio contineant, et contumaces ac delinquentes, gladio civili coerceant. . . .* (appendix XI). On statutory requirement to subscribe the thirty-nine articles see § 16, note 12. Only negatively are we referred to the injunctions; positively, we have an independent explanation of the supremacy. Whether in the mere requirement to subscribe a certain declaration as a condition of appointment to certain offices, is involved a legal establishment of that declaration would seem doubtful.

The idea of the supremacy is also determined in the article *of* the *civill Magistrate*, in the Irish articles of 1615 (see § 11, note 24). It contains the following statement: *nu.* 58. *We do professe that the supreme government of all estates within the said realms and dominions, in all causes as well ecclesiastical as temporal, doth of right appertain to the king's highness. Neither do we give unto him hereby the administration of the word and sacraments, or the power of the keys; but that prerogative only, which we see to have been always given unto all godly princes in holy scripture by God himself; that is that he should contain all estates and degrees committed to his charge by God, wether they be ecclesiastical or civil, within their duty, and restrain the stubborn and evil doers with the power of the civil sword.*—The protestant episcopal church of the United States has adopted the following view: *The power of the civil magistrate extendeth to all men as well clergy as laity, in all things temporal; but has no authority in things purely spiritual. And we hold it to be the duty of all men who are professors of the Gospel to pay respectful obedience to the civil authority, regularly and legitimately constituted.*

to them for its interpretation, gave merely a temporal power over ecclesiastical persons.[26] The substitution, in the first supremacy act of Elizabeth, of 'supreme governor of this realm in all spiritual and temporal things' for 'supreme head of the church' might be regarded as pointing in the same direction. Lastly, in the thirty-nine articles—possibly to be appealed to and, if properly, then decisively, as being the last enactment—the supremacy is declared to be the right to govern all classes and orders, spiritual or temporal, and to punish the stubborn and the evil-doers with the temporal sword.[26a]

Yet in spite of all this, we should not be justified in assuming that the position taken up by the first supremacy act, which certainly bestowed ecclesiastical power, is to be abandoned. If we adhere closely to the actual texts of the legislative enactments which seem to favour an opposite view, we shall find that nowhere in them is it stated that the power of the king to govern the church is of a purely temporal character. In the thirty-nine articles such limitation is confined to his punitive powers. If, moreover, in the expression used in the injunctions, 'sovereignty and rule over all manner of persons' or in the words employed in the articles *hoc est, ut omnes status* etc. *in officio contineant*, the position of the king as controller of the temporal administration and his right to issue ordinances in temporal matters is included, why not also his right as controller of ecclesiastical administration and his right to make ordinances in things spiritual? There is, again, the fact to consider that in none of the legislative enactments referred to is the ecclesiastical jurisdiction previously expressly conferred on the king expressly abolished. On the contrary, both the injunctions of 1559 and the second supremacy act of Elizabeth describe the power claimed as being the same as that claimed and exercised by Henry VIII and Edward VI; the designation 'supreme governor of this realm in all spiritual and temporal things' loses its dual significance when we consider that it stands in the act which confers ecclesiastical power; finally, the phraseology in the thirty-nine articles is so like that employed in the injunctions and the other passages cited that we cannot suppose that something entirely different was to be indicated.

The reason of the ambiguity in the language used lay in the fact that there was still a desire, in order to appease uneasy consciences, to make the transference of new ecclesiastical powers to the crown as little marked as possible. But there was no intention of surrendering such powers. In point of fact, even after the issue of the injunctions and after the subscription of the thirty-nine articles had

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[26] Even Henry VIII expresses himself similarly in his letter to Tunstall. Cf. above, note 19.

[26a] Compare also the canon (not binding on laymen; § 14, note 16) 2 of 1604 (app. XII), according to which the same authority belongs to the English king *quam pii principes apud Judaeos et christiani imperatores in primitiva ecclesia obtinuerunt*, and canon 36[1] *l.c.* (now revoked), where the king is designated *unicus et supremus gubernator hujus regni . . . tam in omnibus spiritualibus sive ecclesiasticis rebus aut causis, quam in secularibus.*

been required by statute, they were exercised just as before. To control the supreme administration of the church under the queen, a new authority was constituted in the 'High Commission Court'; the supreme power of issuing ordinances was employed by the queen when she published her injunctions, and was exercised, to a wide extent, by her successors for more than a century. If in the later enactments of which we have spoken the right of the king is called, in accordance with the formularies of the German protestants, supremacy over persons temporal and spiritual, whilst in the first supremacy act of Henry VIII and in the first supremacy act of Elizabeth, which follows closely the lines of the act of Henry, ecclesiastical authority according to prereformation ideas is ascribed to the sovereign, the difference is one of language and not of meaning.

The present supremacy of the sovereign in England consists mainly in the possession of those rights—with a few doubtful exceptions—which were claimed by the Roman catholic church as ecclesiastical *potestas jurisdictionis*; the king has remained, in every respect, a layman, and has none of the rights which spring from consecration.

Side by side with the supremacy, wherein lies a right of co-operation, many rights still remained to the king as survivals from the middle ages. These medieval rights were rather rights of defending than of co-operating. So far as they had the former character they were not entirely fused with the supremacy; under the changed circumstances they served more rarely to defend the freedom of the civil power than to defend the individual's liberty of conscience against the might of the church.

The indefinite rights implied in the supremacy are now becoming less and less used; the crown confines itself almost wholly to interference in particular cases in which special powers have been conferred on it by statute. For the exercise of the right of issuing ordinances little room has been left since parliamentary enactments have settled the matters with which ordinances might have dealt; moreover, with the views which now prevail as to the rights of representative bodies, the king would hardly make any permanent ecclesiastical regulation without agreement with the convocations, although he is entitled to do so.[27] The exercise of the right of supreme control in the administration of the church has been rendered more difficult by the fact that the authority before employed therein, namely the High Commission Court, has been abolished and the establishment of any similar authority forbidden. Here again it is the doctrine of the desirability of freedom for the church in the state which tends to restrict the employment of the rights involved in the supremacy.

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[27] For a case of an independent, royal ordinance in an ecclesiastical matter see § 15, note 23.

2. CIVIL AUTHORITIES FOR THE ADMINISTRATION OF THE CHURCH.

A. AUTHORITIES OF THE REFORMATION TIME.

§ 29.

a. Authorities for administering the revenues of the state from various ecclesiastical sources.

Before the reformation the revenues drawn by the crown from ecclesiastical sources flowed into the same coffers as all other income. At the time of the reformation certain special authorities were temporarily established for the separate management of several forms of such revenues.

The first authority of this kind was created by 27 *Hen. VIII* (1535/6) c 27, to administer the property which fell to the crown through the first act for the dissolution of monasteries. It bore the name 'Court of the Augmentations of the Revenues of the King's Crown.' The later dissolution acts vested in it the administration of the property of monasteries, colleges, chantries etc. subsequently confiscated.[1]

32 *Hen. VIII* (1540) c 45 called into existence a second court, that of 'First Fruits and Tenths,' for the better management of the sources of revenue mentioned in the title and conferred on the crown by 26 *Hen. VIII* c 3.

By royal letters patent Henry subsequently ordered the abolition of the 'Court of the Augmentations of the Revenues of the King's Crown' and also of another civil court for the administration of domain lands, the 'Court of the general Surveyors of the King's lands;'[2] he also by letters patent vested the powers of both in a new authority, 'the Court of Augmentation *and* Revenues of the King's Crown.'[3] Doubt having arisen as to the validity of these letters patent, they were expressly confirmed by 7 *Ed. VI* (1552/3) c 2.[4]

The same act prescribed, for the simplification of administration, that during the lifetime of king Edward there could be effected by letters patent alteration, fusion, abolition etc. of the 'Court of First Fruits and Tenths,' of the 'Court of Augmentation and Revenues

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[1] 31 *Hen. VIII* (1539) c 13 placed under this court the monastic property which passed to the crown after 4th Feb. 27 *Hen. VIII* owing to voluntary dissolution (not that owing to forfeiture)—both it and the earlier act are supplemented by 32 *Hen. VIII* (1540) c 20, which relates to *franchises* of former monasteries; 37 *Hen. VIII* (1545) c 4 s 7 assigns to its charge the property of various foundations falling to the crown under the act.

[2] After preliminary steps in 14 & 15 *Hen. VIII* c 15 and 27 *Hen. VIII* c 62 this court received a fixed constitution by 33 *Hen. VIII* (1541/2) c 39. s 34 of the latter act continues the competence of the earlier *Court of Augmentacions.*

[3] 1 *Ed. VI* (1547) c 14 s 19 conferred on this court the administration of the property of various foundations to be confiscated under the act.

[4] s 1 of the act.

of the King's Crown,' as also of two other civil financial courts (the 'Court of the King's Wards' and the 'Court of the Duchy of Lancaster').[5] The young king died before any such letters patent were issued; but similar powers were given to his successor by 1 *Mar.* st. 2 (1553) c 10, and the queen availed herself of them, abolishing both the 'Court of Augmentation and Revenues of the King's Crown' and the 'Court of First Fruits and Tenths' and vesting their competence in the 'Court of Exchequer.'[6]

By 2 & 3 *Phil. & Mar.* (1555) c 4 the obligation to pay first-fruits and tithes was abolished, and the surrender of property in possession of the crown as a result of the confiscations was directed. 1 *Eliz.* (1558/9) c 4 repealed this act and revoked the direction to surrender; she did not establish again the several courts, but vested their powers anew in the court of exchequer.[7]

§ 30.

b. High commission for ecclesiastical causes.[a]

From 1535 to 1540 Henry VIII exercised the rights vested in him by the reform legislation generally and by the supremacy act of 1534 in particular, in so far as he did not personally avail himself of them, through 'a vicegerent, vicar-general and special and chief commissary,' whom he himself appointed, or through officials whom he or his vicar-general or both invested with special powers for particular occasions.[1] During the latter years of Henry's reign, the whole of Edward's and the beginning of Mary's, the privy council conducted the supreme administration of ecclesiastical affairs. Apart from it, commissions of varying constitution were nominated mostly for temporary purposes (visitations, the deposition and re-

[5] s 2 of the act.

[6] By four letters patent, two of the 23rd, two of the 24th Jan. in 1 *Mar.* Cf. 1 *Eliz.* c 4 s 1.

[7] Charles II by letters patent of 24th Jan. in the thirty-first year of his reign bestowed the office of *Remembrancer of First Fruits and Tenths* in the Exchequer on Marmaduke Gibbs, his heirs and assignees. 3 *Geo. I* c 10 *An Act for the better collecting and levying the Revenues of the Tenths of the Clergy* created the office of a *Receiver (Collector) of the Tenths*, to be appointed by the king. Thus there was an *Office of First Fruits* which was part of the *Exchequer* and at the head of which stood the *Remembrancer of First Fruits and Tenths*, and also an *Office of Tenths*, managed by the *Receiver of Tenths*. 1 & 2 *Vict.* (1838) c 20 *An Act for the Consolidation of the Offices of First Fruits, Tenths, and Queen Anne's Bounty* abolished the two offices and the two officials just named, and entrusted the collection of first fruits and tenths to the treasurer of Queen Anne's Bounty.

[1] The appointment of Crumwell as vicar-general and his empowerment to bestow authority on others were by letters patent of 1535. These letters patent are no longer in existence. Burnet, *Hist. of Reform* Ed. 1865 I, 293, is of opinion that two commissions to Crumwell, one first immediately after the supremacy act, the second and more comprehensive two years later, are to be

[a] Gneist, *Englische Verfassungsgeschichte* § 31.—Reeves, *Hist. of English Law* Ed. 1814 ff. V, 216–218, Ed. 1869, III, 788 ff.—Stubbs, *Historical Appendix* I, pp. 49 f. *Report of Royal Commission on Ecclesiastical Courts*, 1883 (*Parliamentary Reports*, 1883, vol. XXIV).

institution of bishops etc.)[2] In the first supremacy act of Elizabeth, which again conveyed to the crown the rights surrendered under Mary, the sovereign was expressly empowered to appoint commissioners for the exercise of the powers attached to the supremacy.[3]

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distinguished. (The second does not exist any more than the first.) In Wilkins, *Concilia* III, 784 (the year assigned is 1535) a long commission is given, confirming in their powers sub-commissaries appointed by Crumwell. Reference is made therein to an earlier commission to Crumwell: *Cum itaque nos alias praedilectum nobis Thomam Crumwell, secretarium nostrum primarium, et rotulorum nostrorum magistrum, sive custodem nostrum, ad causas ecclesiasticas quascunque nostra auctoritate, uti supremi capitis dictae ecclesiae Anglicanae quomodolibet tractandas seu ventilandas atque ad exercendam expediendam et exequendam omnem et omnimodam jurisdictionem, auctoritatem sive potestatem ecclesiasticam, quae nobis tanquam supremo capiti huiusmodi competit, aut quovis modo competere possit, aut debeat, ubilibet infra regnum nostrum Angliae et loca quaecunque nobis subjecta, vicem gerentem, vicarium generalem, ac commissarium specialem et principalem, cum potestate alium vel alios commissarium sive commissarios ad praemissa vel eorum aliqua ordinanda et deputanda, per alias litteras nostras patentes, sigillo nostro maiore communitas, constituerimus, deputaverimus et ordinaverimus, prout ex tenore litterarum nostrarum huiusmodi plenius liquet; . . .* For the commission at the first visitation of monasteries, 1535, see Wilkins III, 786.—According to Ranke, *Engl. Gesch.* Book II, c 4 3rd Ed. pp. 132, 146, pope Clement, escaped from imprisonment by the emperor, had appointed Wolsey, already minister, legate and archbishop, to be vicar-general in the English church, so that Henry had a precedent for the appointment he gave to Crumwell.—After the execution of Crumwell (1540) no one else was advanced to the office of vicar-general, Burnet, *Hist. of Reform.* Ed. 1865 II, 40.

[2] Power to appoint commissions for the exercise of the rights, hitherto vested in the pope, over exempt monasteries, is given by 25 *Hen. VIII* (1533/4) c 21 ss 14, 17. To carry out the six article law commissioners with punitive powers were established by 31 *Hen. VIII* (1539) c 14 ss 7 ff. and 32 *Hen. VIII* (1549) c 15. The act against heresy, 34 & 35 *Hen. VIII* (1542/3) c 1 authorizes (s 17) the establishment of commissioners with punitive powers; whilst 37 *Hen. VIII* (1545) c 4 s 6 and 1 *Ed. VI* (1547) c 14 s 8 empower the appointment of commissioners in respect of the confiscation of colleges, chapels, chantries etc., and the management of their property. For the first general visitation under Edward VI (1547) six commissions were appointed, each consisting of a layman, a clergyman and a subordinate official; to each of the commissions a separate district was assigned. Compare further the more general commission of Edward VI *ad observandum librum precum communium* etc., 18th Jan. 1551, in Cardwell, *Doc. Ann.* I, 91. For commissions in Mary's time see Cardwell, *l.c.* I, 223, note. The model of Mary's commissions was brought from the Low Countries, where Philip had endeavoured to establish the inquisition. Elizabeth, in her turn, copied Mary's warrant. (Cardwell, *l.c.*)

[3] *Eliz.* (1558/9) c 1 s 8: *. . . enacted . . . that your Highnes your Heires and Successoures Kinges or Quenes of this Realme, shall have full power and aucthoritee by vertue of this Acte by lettres Patentes under the Greate Seale of Englande, to assign name and aucthorise . . . suche person or persons . . . as your Majestie your Heires or Successoures shall thinke meete texercise use occupie and execute under your Highnes your Heires and Successoures all manner of Jurisdictions Privileges and Preheminences in any wise touching or concerning any Spirituall or Ecclesiasticall Jurisdiccion . . . and to visite refourme redres order correcte and amende all such Erroures Heresies Scismes Abuses Offences Contemptes and Enormitees whatsoever, whiche by any maner Spirituall or Ecclesiasticall Power Aucthoritee or Jurisdiccion can or maye laufullye bee refourmed ordered redressed corrected restrained or amended . . . ; And that suche person or persons . . . shall have full Power and Aucthorite . . .*

In virtue of this authorization Elizabeth, in 1559, nominated several commissions for temporary purposes in the old way.[4] Shortly afterwards she issued for the first time a warrant of a more permanent character to ensure the execution of the acts of uniformity and supremacy. The commission received as the sphere in which its chief functions were to be exercised the whole kingdom; in respect of other functions its powers were confined to the city of London.[5]

By the repetition of similar commissions a permanent, supreme court for ecclesiastical affairs was formed, the principal task of which was to consist in maintaining the unity of faith. Its competence extended to a variety of matters: besides being an administrative body it was, above all, a disciplinary court in regard to the officials of the church, and, in general, a penal court in case of offences committed by clergy or laity against the statutes enacted to give effect to the reformation and to suppress heterodox protestants. Its procedure was inquisitorial. Its power of inflicting fines or imprisonment was further extended in the following reigns. The members constituting it were bishops, privy councillors and others of the clergy and the laity.[6] The commission was not always the same for the whole realm: sometimes separate commissions were appointed for the two archbishoprics, and sometimes a single diocese had its own commission assigned it.[7] These separate commissions were all included in the designation, 'the High Commission Court.'

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texercise use and execute all the Premisses according to the tenour and effecte of the said lettres Patentes; . . .

[4] The commission of 24th June, 1559 (and therefore after the passing of the supremacy act), for the visitation of the dioceses of York, Chester, Durham and Carlisle is printed in Cardwell, *Doc. Ann.* I, 247. In it there is no direct reference to the supremacy, only a general reference to the royal power. According to Strype, *Annals* I, 165 (Ed. 1824, pp. 247 f.) separate commissioners were appointed on 20th June, 1559, to visit Eaton (Eton) college and the university of Cambridge; on 18th July, to visit the dioceses of Llandaff, St. David's, Bangor, St. Asaph, Hereford, Worcester; on 19th July, 1559, for Salisbury, Bristol, Exeter, Bath and Wells, Gloucester; on 22nd July, for Oxford, Lincoln, Peterborough, Coventry and Lichfield; on 21st Aug. 1559, for Norwich, Ely; on 18th June, 1559, royal visitors were already officiating in London.

[5] The first of these more permanent commissions dates from 19th July, 1559 (printed in Cardwell, *Doc. Ann.* I, 223). The members of the high commissioners are the ecclesiastical commissioners of older times. For further warrants of high commission see Cardwell, *l.c.* preface, pp. 13 ff. and I, 223, note; also, Stubbs, *Hist. App. l.c.*—A high commission court for Ireland was created in 1563.—Corresponding courts for Scotland (one for each archiepiscopal province) were first established in 1610. The commission of 1610 is printed in *Acts and Proceedings of the General Assemblies of the Kirk of Scotland* (publications of the Bannatyne Club) III, 1078. The commission of 1615, uniting the two courts into one, is in the same collection, III, 1108. Cf. also on the royal commissions in Scotland allowed in 1584 and abolished in 1592 § 10, notes 25 and 27.—After the restoration a new high commission for Scotland was established by warrant of 16th Jan. 1664. The warrant is printed in Wodrow, *History of Sufferings of Church of Scotland* Ed. 1721 I, 192.

[6] The constitution of the court varied. In 1583 it consisted of 44 commissaries, among them 12 archbishops and bishops, a still larger number of privy councillors and other persons clerical and lay. (Gneist. *Verfassungsgesch.* 497.)

[7] Examples in Stubbs, *Hist. App.* I pp. 49 f. to *Report of Eccles. Courts Commission*, 1883.

The severity with which the high commission court pursued every expression of dissent caused it in the reigns of James I and Charles I to incur the hatred of the people. By act of July the 5th, 1641 (16 sq. *Car. I* c 11) it was abolished, and the establishment in the future of any new authority with like powers was forbidden.[8] After the restoration these provisions were maintained in force, but with the reservation that the king's rights of supremacy were not thereby to be impaired.[9]

In spite of the prohibition just mentioned, James II in 1686 set up, in virtue of his supremacy, a commission[10] with the same extensive powers as the earlier high commission. The court also entered on its functions.[11] But by the end of 1688 the king had to bring himself to abolish it once more.[12] After his expulsion it was expressly declared in the bill of rights (1689) that any such attempt to revive the court was illegal.[13]

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[8] *An Act for repeal of a branch of a Statute primo Elizabethe concerning Commissioners for causes Ecclesiasticall.* s 1 repeals the provisions, quoted in note 3, above, of 1 *Eliz.* c 1. s 4 enacts: . . . *that* . . . *no new Court shall be erected ordeined or appointed within this Realme of England or Dominion of Wales which shall or may have the like power jurisdiction or authoritie as the said High Commission Court now hath or pretendeth to have But that all and every such Letters Patents Commissions and Grants made or to be made by his Majestie his Heires or Successors and all powers and authorities granted or pretended or mentioned to be granted thereby and all Acts Sentences and Decrees to be made by vertue or colour thereof shall be utterly void and of none effect.*

[9] *An Act for Explanation of a Clause contained in an Act of Parliament made in the seventeenth yeare of the late King Charles Entituled An Act for Repeal of a Branch of a Statute Primo Elizabethe concerning Commissioners for Causes Ecclesiasticall.*

s 2. 16 sq. *Car. I* c 11 is repealed *(excepting what concerns the High Commission Court or the new erection of some such like Court by Commission).*

s 3. The repealed part of 1 *Eliz.* c 1 s 18 is not to be revived by this act.

[10] Printed in Kennet, *History of England* 2nd Ed. III, 452, and Cobbett and Howell, *State Trials* XI, 1143. According to Clarke, *Life of James II*, II, 90, the commission dates from 3rd Aug. 1686. According to Kennet, *l.c.* III, 454, note *a*, commissions of like import, but with a change in the persons commissioned, were given on Nov. 22nd, 1686, and probably on 12th Jan. 1687.

[11] Taking action, for example, against Compton, bishop of London, against the vice-chancellor of Cambridge university and against the fellows of Magdalen College, Oxford. — As commissaries were appointed three bishops, the three highest secular officials and one chief justice. Sancroft, originally named as one of the bishops, declined to accept. Another took his place. In 1688 another bishop, Sprat of Rochester, resigned his office.

[12] The abolition of the commission was upon the representations of Sancroft and the bishops, and was intended to attach them to James as against William of Orange, whose invasion was then impending.

[13] 1 *Gul. & Mar.* sess. 2 c 2 under I, 3 (VI, XI): *that the commission for erecting the late Court of Commissioners for Ecclesiastical Causes and all other commissions and courts of like nature are illegal and pernicious.*

B. AUTHORITIES OF THE PRESENT TIME.

§ 31.

The governors of the bounty of queen Anne.[a]

During the reformation the dues of first-fruits and tenths,[1] which had to be paid by certain officers of the church, were conferred on the crown.[2] Queen Anne, ever friendly to the church, desired to devote these moneys once more to ecclesiastical purposes. In accordance with her wish 2 & 3 *Ann.* (1703) c 20 was passed, empowering her to establish by letters patent a corporation and to settle upon it for ever all the revenue of first-fruits and tenths, to be applied in augmenting the maintenance of poor parsons, vicars, curates etc. officiating in the church of England.[3] Under these powers the

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[1] These *tenths* have no connexion with *tithes*, which are paid by parishioners to the holder of a living.

[2] The payment of first-fruits to the pope was abolished by 23 *Hen. VIII* (1531/2) c 20 s 1 [printed in § 6, note 9]. This act was put in force by royal letters patent of 9th July, 25 *Hen. VIII.* It was confirmed by 25 *Hen. VIII* (1533/4) c 20 s 1. By 26 *Hen. VIII* (1534) c 3 ss 1 and 8 first-fruits and tenths were conferred on the crown. This act was, except that the penalties for non-payment of tenths were somewhat mitigated, confirmed by 2 & 3 *Ed. VI* (1548) c 20 and amended in minor points by 7 *Ed. VI* (1552/3) c 4. Some other acts which supplement or amend are recited in the preamble to 1 *Eliz.* c 4. 23 *Hen. VIII* c 20 and 25 *Hen. VIII* c 20 were repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 3. By 2 & 3 *Phil. & Mar.* (1555) c 4 the crown renounced both dues. The tenths were to be paid (into the hands of an ecclesiastical commission to be appointed by Pole) only so long as they should be required for the payment of the rents and pensions which the crown had undertaken, at the dissolution of the monasteries and subsequently, to discharge. 1 *Eliz.* (1558/9) c 1 s 2 revived 23 *Hen. VIII* c 20 and 25 *Hen. VIII* c 20. 1 *Eliz.* c 4 confirmed 26 *Hen. VIII* c 3 and the supplementary acts in so far as they were in force on Aug. 8th 2 & 3 *Phil. & Mar.*, thus making the dues again payable. By an ordinance of the rump parliament, dated 8th June, 1649, tenths and first-fruits (as also 'all Tythes appropriate, Oblations, Obventions, Pensions, Portions of Tythes appropriate, Offerings, Fee-farm Rents, issuing out of Tythes') of the abolished archbishoprics, bishoprics and chapters were to be vested in trustees and applied to the remuneration of ministers, schoolmasters and insufficiently paid university officers, and to the repayment of appropriated tithes to the parishes originally entitled to them. Cf. also the ordinance of the rump, dated 5th April, 1650, that of the protector dated 2nd Sept. 1654 (Scobell c 49) and act of parliament of 1656 c 10. All these enactments became void at the restoration, but dispositions of property made under them were partly confirmed by 12 *Car. II* (1660) c 11 ss 44, 48.

[3] 2 & 3 *Ann.* c 20 *An Act for the makeing more effectuall Her Majesties Gracious Intencions for the Augmentacion of the Maintenance of the Poor Clergy by enabling Her Majesty to grant in Perpetuity the Revenues of the First Fruits and Tenths and also for enabling any other Persons to make Grants for the same Purpose.*

s 1: . . . *That it shall and may be lawfull for the Queens most Excellent Majestie by Her Letters Patents under the Great Seal of England to incorporate such Persons as Her Majesty shall therein nominate or appoint to be One Body Politick and Corporate to have a Common Seal and perpetuall Succession And alsoe at Her Majesties Will and Pleasure by the same or any other Letter Patents to grant limitt or settle to or upon the said Corporacion and their Successors for ever all the Revenue of First Fruits and Yearly perpetuall Tenths*

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[a] Phillimore, *Eccles. Law* 2069 ff.

queen by letters patent of the 3rd of November, 1704,[4] created a corporation bearing the name of "The Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy." It was to consist of the archbishops, bishops,[5] deans, speaker of the house of commons, master of the rolls, privy councillors, lieutenants and *custodes rotulorum* of the counties, the judges, the queen's serjeants at law, attorney and solicitor-general, advocate-general, chancellors and vice-chancellors of the two universities, mayor and aldermen of London, and mayors of the respective cities, for the time being, and was to have power to admit into its body such persons as shall contribute to the objects of the foundation. To the corporation was assigned for ever the income of first-fruits and tenths, to be disposed of as the act directed. The first letters patent were supplemented and changed in minor points by a charter of March 5th, 1714. The administration of the bounty is further regulated by 1 *Geo. I* st. 2 (1714/5) c 10, which contains a clause ratifying agreements made by the governors with private benefactors, and another which substitutes, for convenience sake, royal consent under sign manual for royal consent under the great seal to rules made by the governors of the bounty.[6] 1 & 2 *Vict.* (1838) c 20 abolished the office for the collection of first-fruits and tenths and vested its powers in the treasurer and governors of queen Anne's bounty.[7] The same act directed that the governors should make in writing a return of expenditure and receipts, should present it to her majesty in council and to both houses of parliament, and should keep a copy open to public inspection at the office of the secretary.[8] Besides first-fruits and tenths certain inconsiderable

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of all Dignities Offices Benefices and Promotions Spirituall whatsoever to be applyed and disposed of to and for the Augmentacion of the Maintenance of such Parsons Vicars Curates and Ministers officiateing in any Church or Chapell within the Kingdome of England Dominion of Wales and Towne of Berwick upon Tweed where the Liturgy and Rites of the Church of England as now by Law established are or shall be used or observed with such lawfull Powers Authorities Direccions Limittacions and Appointments and under such Rules and Restriccions and in such Manner and Forme as shall be therein expressed . . .

[4] These letters patent are repeated in abstract in the preamble to 3 & 4 *Vict.* (1840) c 20.

[5] According to 1 & 2 *Vict.* (1838) c 20 s 16 every bishop of a newly created see is *ex officio* a member of the corporation.

[6] 1 *Geo. I* st. 2 (1714) c 10 *An Act for making more effectual her late Majesty's gracious intentions for augmenting the maintenance of the poor clergy.* s 3: *. . . That all such rules, methods, orders, directions and constitutions, as shall, from time to time, be by the . . . governors agreed upon, prepared and proposed to his Majesty, his heirs and successors, according to the true intention of the said letters patent of incorporation, and by his Majesty, his heirs and successors, approved under his or their sign manual, shall be as good, valid and effectual rules, methods, directions, orders and constitutions, for the purposes aforesaid, as if the same were made or established under the great seal . . .*—Cf. also 1 & 2 *Vict.* (1838) c 20 s 19.

[7] Compare § 29, note 7. The office is now called 'Queen Anne's Bounty and First-Fruits and Tenths Office.'

[8] s 18.

sources of income have been assigned by statute to the corporation.[9] As a temporary measure it also received a substantial assistance from the state.[10] Its capital has been increased by private benefactions for general or particular objects; moreover, the governors may accept endowments for churches and chapels erected under the church building acts, the trustees of such endowments being empowered to assign them to the governors.[11]

According to the rules and orders made the augmentations granted are 'by the way of purchase and not by the way of pension.'[12] In many cases land is bought. Frequently only a capital[13] is employed, which is held in trust[14] by the governors, invested in their names and the interest paid to the holder of the augmented benefice.[15]

Besides its work in augmenting poor benefices, originally its sole province, a new form of activity has been given it by later enactments; it has been empowered to grant loans to the holders of benefices for building or repairing parsonages, for other permanent improvements of livings, for making good the dilapidations of a predecessor and the like purposes.[16] These loans may be made by the

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[9] *E.g.*, fines for breaches of 1 & 2 *Vict.* c 106 (s 119 of the act) and of the *Colonial Clergy Act* 37 & 38 *Vict.* c 77 (s 7 of the act).

[10] £100,000 a year for 11 years. Perry, *Hist. of Engl. Ch.* III, 175, note 3. c 10 § 6.

[11] 2 & 3 *Vict.* c 49 s 12.

[12] The rules are printed in Phillimore, *Eccl. Law* 2071; the words quoted are from rule 1.

[13] The governors, as a rule, add £200 to £200 contributed privately.

[14] The sum thus retained in the administration of the governors is now about £4,500,000.

[15] For the outlines of the present system of administration see the reports of the bishops of London and Hereford presented Feb. 11th, 1887, to the upper house of the convocation of Canterbury, *Chronicle of Convocation*, 1887, Summary p. viii, printed also in the *Church Year-Book* for 1891 p. 432.

[16] The first such enactment is:—

17 *Geo. III* (1777) c 53 s 12: *It shall and may be lawful for the governors . . . to advance and lend any sum or sums of money, not exceeding the sum of* £100, *in respect of each living or benefice, out of the money which has arisen, or shall from time to time arise, from that bounty, for promoting and assisting the several purposes of this act, with respect to any such livings or benefices as shall not exceed the clear annual improved value of* £50*; and such mortgage and security shall be made for the repayment of the principal sums so to be advanced, as are hereinbefore mentioned, but no interest shall be paid for the same; and in cases where the annual value of such living or benefice shall exceed the sum of* £50, *that it shall and may be lawful for the said governors to advance and lend, for the purposes of this act, any sum not exceeding two years income of such living or benefice upon such mortgage and security as aforesaid, and subject to the several regulations of this act, and to receive interest for the same, not exceeding four per cent.*

Further regulations affecting this part of the work of the governors of the bounty and partly altering the above are contained in: 21 *Geo. III* c 66; 7 *Geo. IV* c 66; 1 & 2 *Vict.* c 23; 1 & 2 *Vict.* c 106; 19 & 20 *Vict.* c 50 s 15; 28 & 29 *Vict.* c 69; 34 & 35 *Vict.* c 43 *Ecclesiastical Dilapidations Act* 1871; 35 & 36 *Vict.* c 96; 44 & 45 *Vict.* c 25 *Incumbents of Benefices Loans Extension Act* 1881; 49 & 50 *Vict.* c 34 *Inc. of Benef. Loans Extens. Act* 1886; 50 *Vict.* sess. 2. c 8 *Inc. of Benef. Loans Extens. Act* 1886 *Amendment Act* 1887.

governors out of the trust capital to the clergy on the security of their benefices.[17]

Lastly, various acts have conferred on the governors of queen Anne's bounty certain rights of control calculated for the preservation of the substance of a benefice, the house of residence and lands. Thus the purchase money derived from the sale of an inconveniently situated house of residence is to be paid into the hands of the governors,[18] as also are to be paid, or may be paid:—enfranchisement money for the use of any spiritual person;[19] the income of a benefice under sequestration, the stipends of the curate or curates being first deducted, until the cost of dilapidations has been discharged;[20] the sum recovered by a new incumbent from his predecessor for dilapidations;[21] sums received from an insurance office for buildings insured under the ecclesiastical dilapidations act and destroyed or damaged by fire.[22] The incumbents are required under the act just mentioned to insure the buildings on the lands of the benefice against fire. The insurance is to be effected in the joint names of the incumbent and the governors in some office selected by the incumbent, to the satisfaction of the governors, in at least three fifths of the value of the buildings.[23]

§ 32.

Ecclesiastical commissioners for England.[a]

By 58 *Geo. III* (1818) c 45[1] a sum not exceeding £1,000,000 was set apart from state funds to promote the building of new churches, and the king was empowered to appoint by letters patent commissioners for ten years to execute the purposes of the act. These commissioners received the name 'His Majesty's Commissioners for building New Churches' and were incorporated by 59 *Geo. III* (1819) c 134.[2] Five years later 5 *Geo. IV* c 103[3] granted an additional

[17] See report of two bishops in 1887, cited above, note 15.
[18] 1 & 2 *Vict.* c 23 s 7; 1 & 2 *Vict.* c 29 s 8; 2 & 3 *Vict.* c 49 ss 14, 17.
[19] 21 & 22 *Vict.* c 94 s 17.
[20] 34 & 35 *Vict.* c 43 *Ecclesiastical Dilapidations Act* 1871, ss 20 ff.
[21] 34 & 35 *Vict.* c 43 ss 37 ff.
[22] 34 & 35 *Vict.* c 43 s 56.
[23] 34 & 35 *Vict.* c 43 s 54.

[1] *An Act for building and promoting the building of additional Churches in populous Parishes.*
[2] *An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes.*
[3] *An Act to make further Provision, and to amend and render more effectual Three Acts passed in the 58th and 59th Years of His late Majesty, and in the 3d Year of His present Majesty, for building and promoting the building of additional Churches in populous Parishes.*

Gneist, *Englisches Verwaltungsrecht* 3rd Ed. § 173.—Phillimore, *Ecclesiastical Law* 2090 ff. —*General Index to Orders of Her Majesty in Council ratifying Schemes and Representations of the Ecclesiastical Commissioners for England; and also to Instruments for making grants to Benefices and Churches. Made up to the 31st October*, 1868. London, 1870; Eyre & Spottiswoode. [Cf. also the extracts from *Orders in Council* down to 1842 in Burn, *Ecclesiastical Law* 9th Ed. IV, 729 ff.]

state aid of £500,000. The acts cited and some others empowered the commissioners to propose divisions and re-arrangements of parishes, which could then be carried into effect by orders in council. The commission was continued from time to time by acts of parliament, until by 19 & 20 *Vict.* (1856) c 55 *Church Building Commissioners (Transfer of Power) Act*[4] it was abolished and its rights, privileges and property were vested in the ecclesiastical commissioners.

The 'Ecclesiastical Commissioners for England' were established and incorporated by 6 & 7 *Gul. IV* (1836) c 77.[5] The commission was to consist of the archbishop of Canterbury, archbishop of York and bishop of London for the time being, the holders for the time being of five great offices (specified) of state, all *ex officio*, and also of two bishops and three laymen; the five last mentioned members were removable by the crown; all members had to be of the church of England.[6] The composition of the commission was considerably altered by 3 & 4 *Vict.* (1840) c 113. *Ex-officio* members are now:—all the archbishops and bishops, the deans of Canterbury, St. Paul's and Westminster; also, if members of the church of England, a number of the highest judicial functionaries; power was given to the crown to appoint four and to the archbishop of Canterbury to appoint two lay commissioners, in addition to the three already appointed.[7] For current business 13 & 14 *Vict.* (1850) c 94 directs

[4] Cf. also in particular 3 *Geo. IV* (1822) c 72 *An Act to amend and render more effectual Two Acts, passed in the* 58th *and* 59th *Years of His late Majesty, for building and promoting the building of additional Churches in populous Parishes.*

[5] In connexion with the questions of parliamentary reform and the granting of full civil rights to protestant dissenters and Roman catholics, the unequal distribution of property among the various officers of the church was the object of vigorous attacks during the thirties and forties. Thus a royal commission was appointed (23rd June, 1831) 'to inquire into the revenues and patronage of the Established Church.' This commission was continued in 1833 and again, with an extended field of investigation, in 1834. A new commission for the same purpose was appointed after the change of ministry in 1835. Its powers became extinct in 1837 with the death of the king. These royal commissions of investigation were entitled 'Commissioners of ecclesiastical Duties and Revenues.' They made four reports (1835 and 1836). The draft of a fifth report, incomplete owing to the extinction of powers mentioned, was nevertheless laid before parliament. It is on the proposals of these commissions that the most important reforming laws of that time rest (the first being 6 & 7 *Gul. IV* c 77), as also rests the establishment of a permanent commission, which was, above all, 'to prepare and lay before her majesty in council such schemes as shall appear to them to be best adapted for carrying into effect' the recommendations made. See here Perry, *Hist. of Engl. Ch.* III, 170 ff. cc 10, 11, especially p. 202.

[6] 6 & 7 *Gul. IV* c 77 ss 1–6.

[7] 3 & 4 *Vict.* c 113 s 78: . . . *That in addition to the Commissioners named in* . . . 6 & 7 *Gul. IV* c 77 . . . *the following Persons shall be Ecclesiastical Commissioners* . . . ; *that is to say, all the Bishops of England and Wales for the Time being respectively, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of Her Majesty's Court of Common Pleas, the Lord Chief Baron of Her Majesty's Court of Exchequer, the Judge of the Prerogative Court of the Archbishop of Canterbury, the Judge of the High Court of Admiralty for the Time being respectively (such*

the formation of an 'Estates Committee.' It consists of two laymen to be appointed by the crown, one of whom is salaried, and one salaried official to be appointed by the archbishop of Canterbury; all three are removable by their appointers; whilst in office they are ecclesiastical commissioners. Any ecclesiastical commissioner, not being such *ex officio*, may be appointed a church estates commissioner. The ecclesiastical commissioners may add annually to the estates committee two members, at least one being a layman not sitting as a commissioner in virtue of any office.[8] The ecclesiastical commissioners may only manage their property through the estates committee or with the co-operation of two of the members of that committee.[9] The general rules which the ecclesiastical commissioners make for the estates committee are to be laid before both houses of parliament.[10] The ecclesiastical commissioners have to make an annual report to one of the secretaries of state, and the report is to be laid before parliament,[11] as also are copies of all orders in council.

According to the older laws the ecclesiastical commissioners had only power to prepare and submit to her Majesty in council such schemes as might seem best calculated for giving effect to certain recommendations. But by degrees there have been conferred on the commission numerous rights to be exercised independently. Its functions may be grouped under six heads:—

1. Altering the boundaries of ecclesiastical districts and the incomes of the clergy.[12]
2. Carrying out the provisions of recent reforming enactments, various estates being in this connexion vested in them and the proceeds administered by them.[13]

Chief Justices, Master of the Rolls, Chief Baron, and Judges being respectively Members of the United Church of England and Ireland), the Deans of the Cathedral Churches of Canterbury and Saint Paul in London, and of the Collegiate Church of Saint Peter Westminster for the Time being respectively; and also Four such Lay Persons (being Members of the said United Church) as shall be duly appointed by Her Majesty . . . and such other Two Lay Persons (being Members of the said United Church) as shall be duly appointed by the Lord Archbishop of Canterbury for the Time being, . . . Cf. ss 79 ff.

[8] 13 & 14 *Vict.* c 94 ss 1, 2, 7.

[9] 13 & 14 *Vict.* c 94 s 8.

[10] 13 & 14 *Vict.* c 94 s 12.

[11] 13 & 14 *Vict.* c 94 s 26.

[12] Altering boundaries of bishoprics, archdeaconries and rural deaneries under 6 & 7 *Gul. IV* c 77 and later acts. Transferring peculiars to the jurisdiction of the bishop, suppression of commendams and sinecure rectories, equalizing the incomes of bishops, of archdeacons, of holders of livings belonging to the same patron under 6 & 7 *Gul. IV* c 77 and 3 & 4 *Vict.* c 113. Regulating the incomes of chapters, canons, archdeacons etc. under 31 & 32 *Vict.* (1868) cc 19 and 114. Consolidating or separating parishes divided between two or more incumbents under 3 & 4 *Vict.* c 113 s 72. Altering parish boundaries in definite places under local acts, and generally in connexion with the *Church Building* and *New Parishes Acts*. Compare *e.g.* 47 & 48 *Vict.* (1884) c 65. Exchanging between ecclesiastical corporations and the commissioners under 29 & 30 *Vict.* c 111 s 4. Apportioning of income of benefices belonging to one patron under 3 & 4 *Vict.* c 113 s 74.

[13] Estates of bishoprics vested in commissioners under 6 & 7 *Gul. IV* c 77;

3. Management of the lands etc. of bishoprics. Accepting the transference of the property of chapters, canons, archdeacons and minor canons, on application of the holders, for the purpose of otherwise settling the property or income of such bodies or persons.[14]
4. Superintendence of the otherwise independent management of property by holders of benefices and by ecclesiastical corporations, especially in respect of the granting of leases.[15]

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13 & 14 *Vict.* c 94 s 17; 23 & 24 *Vict.* c 124 s 2; estates of canonries etc., the separate estates of deaneries and canonries, the estates of newly endowed archdeaconries under 3 & 4 *Vict.* c 113 and other acts. Co-operation in the sale of advowsons etc. by corporations under 5 & 6 *Gul. IV* c 76; 6 & 7 *Gul. IV* c 77 s 26; in the sale of part of the lord chancellor's patronage under 26 & 27 *Vict.* c 120 and of the patronage of universities and endowed schools under 3 & 4 *Vict.* c 113 s 69; 23 & 24 *Vict.* c 59.

[14] Touching bishoprics, 23 & 24 *Vict.* (1860) c 124 s 11; touching minor canons, 27 & 28 *Vict.* (1864) c 70; touching chapters, canons, archdeacons etc., 31 & 32 *Vict.* (1868) c 19 and c 114; touching estates of newly endowed archdeaconries, 3 & 4 *Vict.* c 113 s 56; 24 & 25 *Vict.* c 131; 29 & 30 *Vict.* c 111 ss 15, 16; touching the library etc. of Lambeth Palace, 29 & 30 *Vict.* c 111 ss 7, 8.

The details which follow are derived from the *Church Year-Book* for 1891, pp. 542 ff.

The commissioners had the management of the estates forming the permanent endowment of Canterbury, York, Durham, Winchester, Carlisle, Chester, Ely, Gloucester and Bristol, Hereford, Lincoln, Norwich, Oxford, Peterborough, Worcester (23 & 24 *Vict.* c 124 s 11).

Vested in the commissioners under 23 & 24 *Vict.* c 124 s 2, the income derived therefrom being included in the rental of the commissioners' estates, are the estates of the following sees: London, Bangor, Bath and Wells, Chichester, Exeter, Lichfield, Llandaff, Ripon, Rochester, St. Asaph, St. David's, Salisbury.

Manchester had no estates; Sodor and Man was not included in the commissioners' operations.

There have been gradually vested in the commissioners in exchange for annual payments under the various acts the estates of the following bodies:—

Wholly: Chichester, *vicars choral*, Lichfield, *vicars choral*, St. David's, *chapter* and *vicars choral*, London, *minor canonries* and *vicars choral*, Wells, *vicars choral*, Westminster, *chapter*, Windsor, S. George, York, *vicars choral*; so from the outset the estates of the chapter of Southwell.

Partly: Bristol, *chapter*, Ely, *chapter*, Exeter, *chapter* and *vicars choral*, Lichfield, *chapter*, Lincoln, *chapter*, Llandaff, *chapter*, Ripon, *chapter*, London, *chapter*, Salisbury, *vicars choral*, Wells, *chapter*, Worcester, *chapter*.

At Bangor, as also at St. Asaph, the incomes of the dean and four canons are provided by the ecclesiastical commissioners.

The sum annually paid over by the commissioners to bishops, chapters, archdeacons, etc. is £950,000.

[15] Compare 5 & 6 *Vict.* c 108 and 21 & 22 *Vict.* c 57 *The Ecclesiastical Leasing Act*, 1858, further, 23 & 24 *Vict.* c 124 s 8 (bishoprics), 31 & 32 *Vict.* c 114 s 9 (chapters). Premiums etc. are to be paid over to the commissioners. In transfers under 31 & 32 *Vict.* c 114 s 4 the commissioners may set apart a capital sum for repair of fabric. Commissioners assent to measures for procuring and maintaining official residences for bishops, members of chapters and incumbents of livings augmented by the commissioners, and to loans for such purposes (1 & 2 *Vict.* c 23, 3 & 4 *Vict.* c 113 s 59, 5 & 6 *Vict.* c 26). They approve loans and advance money for permanent improvements on lands assigned as an endowment for a see (23 & 24 *Vict.* c 124 s 10); also the sale of securities held by chapters, the sale, exchange and purchase of lands, tithes etc. for chapters or bishoprics in the interest of the chapters 3 & 4 *Vict.* c 113 s 68. When land is to be enfranchised under 21 & 22 *Vict.* c 94 and belongs to a manor belonging

5. Establishing and endowing new offices for the cure of souls or supervision in thickly populated districts.[16]
6. Accepting private benefactions for certain spiritual purposes.[17]

In the three last mentioned departments of their work the functions of the ecclesiastical commissioners approximate closely to those of the governors of queen Anne's bounty.

3. ARCHBISHOPS AND BISHOPS.

§ 33.

A. ORIGIN OF THE VARIOUS ARCHBISHOPRICS AND BISHOPRICS.

In the period before the Anglo-Saxon settlement, and even later in Keltic districts, the existence of metropolitans cannot be demonstrated with any degree of certainty.[1]

When Augustine in the spring of 597 came to Britain and took up his abode at Canterbury, he was not yet a bishop. In the August of the same year he crossed over to France again and was there consecrated bishop (or archbishop?[2]) by the archbishop of Arles, permission having been previously obtained from pope Gregory I.[3]

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to the commissioners, notice must be given to them (s 19). The commissioners approve sales etc. by ecclesiastical corporations under 14 & 15 *Vict.* c 104 (supplemented by 17 & 18 *Vict.* c 116 and later acts). They further see to the insurance of residences of bishops, deans, canons etc. built under the acts recited in 5 & 6 *Vict.* c 26 (see s 11 of that act).

[16] In the various acts which relate to new foundations of bishoprics and chapters, the collection and the determination of the endowments are entrusted to the commissioners. The surplus in the hands of the commissioners, derived from the sources indicated above, is devoted to the augmentation of benefices. The three classes of grants made are given in Phillimore, *Eccles. Law* 2106, 7. Statistics will be found in the *Church Year-Book*, which appears annually. (*E.g.* for 1880–90 and for 1891 in the vol. for 1893, p. 528.)

[17] By 6 & 7 *Vict.* c 37 s 22, and 7 & 8 *Vict.* c 104 s 11, for new churches and augmenting benefices; by 19 & 20 *Vict.* c 104 s 27, for new parsonages etc.

[1] For more on this point and the probable non-existence of archbishops in Wales see Haddan and Stubbs, *Councils* I, 142, 148. Cf. also Wilkins, *Concilia* I, 7. Welsh bishops are in several documents designated archbishops without there being, apparently, any right implied to govern other bishops. On the archiepiscopal sees alleged to have been in existence before Augustine's time, viz. those of London, York and Menevia (St. David's) see Wilkins IV, 699. On Scotland see § 10, note 5; on Ireland, § 11, note 6. Cf. also § 1, note 3.

[2] A special right of superintendence over ordinary bishops was recognized as belonging to metropolitan bishops even before the first council of Nicaea (325) and that of Antiochia (341); nevertheless for several centuries to come the position of the metropolitan was not exactly defined. Richter, *Kirchenrecht* § 13, note 1, § 24, note 15. According to Haddan and Stubbs III, 3 the following designations of Augustine occur: *Archiepiscopus genti Anglorum* (Beda Book I c 27) and *Britanniarum* (Beda Book II c 3)—*Episcopus* or *Frater et coepiscopus* and once *Episcopus Anglorum* (*Gregor. Epistol.*)—*Episcopus Cantuariorum ecclesiae* (*Augustin. Quaest.* in Beda Book I c 27)—*Doruvernensis Archiepiscopus* (epitaph of Augustine in Beda Book II c 3).

[3] Beda, *Hist. Eccles.* Book I c 27 § 58: *Interea vir Domini Augustinus venit Arelas, et ab archiepiscopo ejusdem civitatis Aetherio, juxta quod jussa sancti*

Gregory subsequently (601), in reply to a question by Augustine, directed that the latter should have supreme control over all bishops in Britain.[4] At the same time he sent Augustine a pallium and gave instructions for further developing the constitution of the church. Augustine was to consecrate *per singula loca* twelve bishops who after his death were to be subject to a metropolitan of London, invested with a pallium by the pope; further, he was to send a bishop to York, who also was to be afterwards invested as metropolitan with a pallium and was to consecrate in his turn twelve bishops to be subject to himself; after the death of Augustine the metropolitans of London and of York were to be, in principle, equal, formal precedence being given to the one consecrated earlier.[5] The selection of the towns of London and York is explained by the fact that they were the most notable towns in the country and the capitals of former Roman provinces.

The directions of Augustine were never completely carried out. For London, it is true, Mellitus was consecrated bishop by Augustine (604). But when soon afterwards the latter died (604?), the position of a metropolitan passed to Laurentius, whom Augustine had consecrated as his successor and who kept Canterbury as his see. This deviation from the instructions of Gregory may have been partly due to the fact that at this time Essex and London were politically dependencies of Kent. In 617 or 618 Mellitus was driven from London; at the ensuing vacancies in the see of Canterbury at the deaths of archbishops Laurentius (619), Mellitus (624), Justus (627?)

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patris Gregorii acceperant, archiepiscopus genti Anglorum ordinatus est; . . . —*Greg. Epist.* VII, 30 (Haddan and Stubbs III, 12): *Qui* (Augustinus) *data a me licentia a Germaniarum Episcopis* (*i.e.* by the Frankish bishops) *Episcopus factus est . . .*

[4] Answer of Gregory to the seventh question of Augustine, *Qualiter debemus cum Galliarum Britanniarumque Episcopis agere? . . . Britanniarum vero omnes Episcopos tuae fraternitati committimus, ut indocti doceantur, infirmi persuasione roborentur, perversi auctoritate corrigantur.* (Haddan and Stubbs III, 22.) This would also imply supremacy over the bishops of the Britons, but these were but slightly connected with Rome and certainly not in subjection to the pope. Compare also another letter about the same time by Gregory to Augustine (Haddan and Stubbs III, 29): . . . *Tua vero fraternitas non solum eos Episcopos quos ordinaverit, neque hos tantummodo qui per Eburacae Episcopum fuerint ordinati, sed etiam omnes Brittaniae sacerdotes habeat . . . subjectos . . .*

[5] Second letter of Gregory to Augustine, 601 (Haddan and Stubbs III, 29): . . . *usum tibi pallii . . . concedimus: ita ut per loca singula duodecim Episcopos ordines, qui tuae subjaceant ditioni, quatenus Lundoniensis civitatis Episcopus semper in posterum a synodo propria debeat consecrari, atque honoris pallium ab hac sancta et Apostolica . . . sede percipiat. Ad Eburacam vero civitatem te volumus Episcopum mittere, quem ipse judicaveris ordinare; ita duntaxat, ut si eadem civitas cum finitimis locis verbum Dei receperit, ipse quoque duodecim Episcopos ordinet, et metropolitani honore perfruatur; quia ei quoque, si vita comes fuerit, pallium tribuere . . . disponimus, quem tamen tuae fraternitatis volumus dispositioni subjacere: post obitum vero tuum ita Episcopis quos ordinaverit praesit, ut Lundoniensis Episcopi nullo modo ditioni subjaceat. Sit vero inter Lundoniae et Eburacae civitatis Episcopos in posterum honoris ita distinctio, ut ipse prior habeatur qui prius fuerit ordinatus: . . .*

and Honorius (653), London was not an episcopal see. A bishop for London was indeed consecrated in 654, but he followed the Keltic use. Not until after the conference of Streoneshalch (664) was this difficulty removed, the bishop of London accommodating himself to the Roman use. But Canterbury had now been so long the archiepiscopal seat, that the possibility of a change was not contemplated. Although it sank afterwards to the rank of an unimportant provincial town, it remained the seat of the archbishop of the southern province.[6]

Gregory's proposal of an archbishopric of York had also difficulties in the way of its realization. Not until 625 was a bishop, Paulinus, sent there; in 627 Eadwine, king of Northumbria, gave the church a permanent endowment so that thenceforth the existence of a bishopric at York was secured.

It was probably in the same year that Justus, archbishop of Canterbury, died. Honorius, chosen by the clergy of Canterbury as his successor, begged consecration of Paulinus, then the sole bishop in England following the Roman use,[7] and the latter granted his request. Palliums were sent for both from Rome by pope Honorius I, who gave authority that if one of them died the other was to consecrate a successor to the deceased; for the distance forbade any waiting for the pope's intervention.[8]

But in 633 Paulinus had to flee from York,[9] so that it was after his expulsion that the pallium came into his hands. When during the reign of king Oswald, Keltic Christianity became dominant in Northumbria, the see of York remained for the time being vacant. Bishop Aidan, summoned from Iona, settled in the island of Lindisfarne (635)[10] near the northern boundary of the Anglo-Saxon domain; it was from Lindisfarne that he and his successors exercised superintendence over the church in Northumbria.

In consequence of the issue of the conference of Streoneshalch, Colman, the then bishop of Lindisfarne, who refused to submit to the decision reached, left the country. His successor Tuda died a short time afterwards (664). Wilfrid was now elected and repaired to Gaul to seek consecration. In his absence Ceadda was chosen to

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[6] As London became more and more definitely the seat of government, it was felt that the head of the ecclesiastical administration should also be located there or in the immediate neighbourhood. For the steps by which the manor of Lambeth came to be held by the archbishops of Canterbury (twelfth century) see Stubbs in Introduction to *Epistolae Cantuarienses* (*Rer. Brit. Scr.* No. 38) vol. II pp. xcii and xciv.

[7] Haddan and Stubbs III, 82, note *a*.

[8] Letter of pope Honorius I to archbishop Honorius, 634 (Haddan and Stubbs III, 84): *Et tam juxta vestram petitionem quam filiorum nostrorum regum vobis per praesentem nostram praeceptionem, vice beati Petri apostolorum principis, auctoritatem tribuimus, ut quando unum ex vobis Divina ad se jusserit gratia vocari, is qui superstes fuerit, alterum in loco defuncti debeat Episcopum ordinare. Pro qua etiam re singula vestrae dilectioni pallia . . . direximus . . .* A letter to the like effect written at the same time to Eadwine of Northumbria will be found *l.c.* III, 83.

[9] Cf. § 1, near note 7.

[10] Haddan and Stubbs III, 91.

the bishopric (also in 664). On Wilfrid's return, Ceadda retired into a monastery, and afterwards became bishop in Mercia. Wilfrid undertook the administration of the diocese of Northumbria, and removed the seat of the bishopric once more to York (*circ.* 669).[11] None of the bishops here mentioned of Lindisfarne or York, including Wilfrid, received the pallium.[12] It was first bestowed after the interval on Egbert, bishop of York (734), and from his time onward regularly on the archbishops of York.

In the eighth century the hegemony passed to the kingdom of Mercia. Hence arose a wish to make that kingdom ecclesiastically independent of the neighbouring countries. King Offa of Mercia induced the pope to consent to a division of the archiepiscopal district of Canterbury and the elevation of Lichfield, the oldest bishopric of Mercia, to an archbishopric. A resolution accepting the scheme was passed by the assembly, at which papal legates were present, of temporal and spiritual magnates at Celchyth (787). The archbishop of Lichfield received the pallium as a third archbishop in England.

About the year 796 disorder broke out in Kent, the agitation being directed against the supremacy of the kings of Mercia; even the archbishop of Canterbury was compelled to take flight. The rising was, it is true, suppressed; yet it was possibly in connexion with this outbreak that Coenwulf, the then king of Mercia, became disposed toward the abolition of the separate archbishopric of Lichfield. By his desire the pope approved the rejoining of the divided parts,[13] and in 802 ordered a reversion to the old state of affairs.[14] The union of the archiepiscopal sees received the formal assent of the king and his temporal magnates, and was subsequently ratified at the synod of Clovesho (803) by the ecclesiastical members thereof.[15] Canterbury was again made the head of the whole southern province, and Lichfield became, as it had been before, an ordinary episcopal see.

From that time there have been only two archbishoprics in Eng-

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[11] Beda, *Hist. Eccles.* Book IV, c 3 § 259.—In 678 the diocese of Northumbria was divided, Lindisfarne and Hexham being chosen as the seat of the northern bishopric, York of the southern. Beda, Book IV c 12 § 238. Haddan and Stubbs III, 125.

[12] A document, professing to be of the year 680, in which is the signature of Wilfrid as 'archbishop of York,' is not genuine. (Wilkins I, 50; Haddan and Stubbs, *Counc.* III, 160.)

[13] Letter of Coenwulf to pope Leo III and answer of the latter (both in 798) printed in Haddan and Stubbs III, 521 ff.

[14] Annulling of the division by bull of Leo, in virtue solely of his right as pope, and his announcement thereof to Coenwulf (both in 802), Haddan and Stubbs III, 536 ff.

[15] Resolution at Clovesho in Haddan and Stubbs III, 542. In the introduction thereto we read of preceding resolutions: . . . *Papa . . . in Britanniam misit et praecipit ut honor Sancti Augustini sedis cum omnibus suis parochiis redintegraretur . . . et honorabili Archiepiscopo Aethelheardo in patriam pervenienti per omnia redderetur, et Coenwlfus Rex pius Merciorum ita complevit cum senatoribus suis.*

land, Canterbury and York.[16] The boundaries of the provinces have, however, undergone changes.

The outer limits were extended in accordance with the advance of Christianity of the Roman use in its struggle with paganism and Christianity of the Keltic use. The progress of Roman Christianity in Cornwall, Wales and, temporarily, in parts of Ireland was to the gain of the province of Canterbury,[17] progress in the border lands of Scotland, to that of the province of York.[18] An attempt made by Ethelnot, archbishop of Canterbury (1020–38), who lived during the reign of Knut, to arrogate to himself supremacy over bishops of the Scandinavian church, was thwarted by the resistance of the archbishop of Hamburg.[19] In 1152 the three Irish bishops of Dublin, Waterford and Limerick acknowledged the primate of Armagh, thus repudiating allegiance to Canterbury; in 1188 the final severance of Scotland from York took place.

As to internal boundaries, from the end of the eleventh and on into the twelfth century, Canterbury and York were at variance with one another. This dispute was complicated with that to be discussed presently as to the precedence of Canterbury. The archbishop of York raised a claim to the districts of the bishops of Lincoln (Dorchester), Worcester and Lichfield.[20] The assemblies of Winchester and Windsor (1072)[21] decided against York and fixed as the boundary between the two provinces the river Humber and the northern limit of the diocese of Lichfield,[22] thus practically

[16] See also Radulf de Diceto, *Abbrev. Chron.* (*Rer. Brit. Scr.* No. 68) I, 255, year 1142: *Lucius papa pallium misit Henrico Wintoniensi episcopo, cui proposuerat assignare septem episcopos.* Matth. Paris, *Chron. Maj.* (*Rer. Brit. Scr.* No. 57) II, 176 borrows this and adds: *volens apud Wintoniam novum archiepiscopum constituere.* Cf. *Ann. de Wintonia* (*Rer. Brit. Scr.* No. 36) II, 53.—On fruitless endeavours to raise St. David's to an archbishopric see § 1, note 25.

[17] For the older history of the various episcopal sees of Wales, see Haddan and Stubbs I, 142 ff.

[18] For an enumeration of the older sees in the province of York see a letter of 1120 in Haddan and Stubbs II, 204.

[19] Lappenberg, *Geschichte von England*, Hamburg, 1834, I. 470.

[20] William of Malmesb., *Gest. Pont.* (*Rer. Brit. Scr.* No. 52) p. 40, year 1071: *In cuius* (pope Alexander's) *praesentia Thomas calumniam movit de primatu Dorobernensis ecclesiae, et de subjectione trium episcoporum Dorcensis sive Lincoliensis, Wigorniensis, Licitfeldensis qui nunc est Cestrensis . . .* Similarly Milo Crispinus (died *circ.* 1114), *Vita Lanfranci* (ed. Giles) p. 302. On the condition of the province of York from the tenth to the twelfth century cf. Stubbs in Hoveden (*Rer. Brit. Scr.* No. 51), preface pp. xxxiv ff. to vol. IV; on the connexion of Worcester with York from the end of the tenth to the beginning of the twelfth century *l.c.* p. xxxv, note 1.

[21] Cf. § 34, note 5.

[22] The document is printed in § 34, note 6. But see there the contention of Hugo Cantor that the document professing to give the resolutions of these assemblies is forged.—At any rate the archbishops of York maintained their claim to Lincoln after this date. Henry of Huntingdon, under the year 1087 (*Rer. Brit. Scr.* No. 74) 212: *Provinciam tamen Lindisse archiepiscopus Eboracensis calumpniabatur ex antiqua temporum serie.* Florent. Wigorniensis, year 1092 (ed. Thorpe II, 30): *Antistes etiam Remigius, qui licentia regis Willelmi senioris, episcopalem sedem de Dorcaceastra mutaverat ad Lindicolinam, constructam in ea ecclesiam pontificali cathedra dignam*

assigning the earlier kingdom of Northumbria and its extensions to the province of York, the territory of the six other Anglo-Saxon kingdoms and their extensions to the province of Canterbury. In spite of this delimitation, York, in 1175, renewed and enlarged its claims at the council of London (also called the council of Westminster), but without success.[23] Small adjustments have from time to time been made. Of more considerable changes may be mentioned the assignation of the newly founded see of Chester[24] and the diocese of the bishop of Man[25] to the province of York by

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dedicare volebat . . . ; sed Thomas Eboracensis archiepiscopus illi contradicendo resistebat, affirmans eam in sua parochia esse constructam . . . Hugo Cantor (*The Historians of the Church of York, Rer. Brit. Scr.* No. 71) II, 105: *In crastinum* (5th Dec. 1093) *Thomas archiepiscopus Cantuaria recessurus, loquens cum Anselmo archiepiscopo . . . interdixit ei . . . ne Robertum Bloeth, Lincolniensis ecclesiae electum, Lincolniensem ordinaret episcopum . . . Lincolinum oppidum, et magnam partem provinciae Lindissi dicebat fuisse et jure esse debere parochiam Eboracensis ecclesiae, et injuria illi ereptam esse cum tribus villis, scilicet Stou, et Loudham et Niuwerca. . . .* The document of William II relating to the renunciation of this claim by the archbishop of York (about 1093–94) is printed in *Rer. Brit. Scr.* No. 71, III, 21. In the year 1125 there were discussions as to the handing over of St. Asaph, Bangor and Chester to the province of York. Haddan and Stubbs, *Counc.* I, 316.

[23] Benedict of Peterborough (*Rer. Brit. Scr.* No. 49) I, 89: *In hoc autem concilio clerici Rogeri Eboracensis archiepiscopi . . . calumniati sunt . . . ex parte Eboracensis archiepiscopi, episcopatum Lincolniensem, et episcopatum Cestrensem, et episcopatum Wigornensem, et episcopatum Herefordensem, de jure pertinere debere ad metropolitanam Eboracensium ecclesiam.*

[24] The king had previously by letters patent of 16th July, 33 *Hen. VIII*, established the bishopric of Chester assigning to it, in particular, the monastery of St. Werberge at Chester and the archdeaconry of Richmond, which until then had belonged to the diocese of York, and subjecting it to the archbishop of Canterbury.

[25] On the ecclesiastical and political history of Man cf. Joseph Train, *An Historical and Statistical Account of the Isle of Man, from the earliest times to the present date*, 2 vols., Douglas, 1845, and William Prynne, *Animadversions to the Fourth part of Coke's Institutes* pp. 201, 384. On the history of the bishopric compare, further, William Harrison, *An Account of the Diocese of Sodor and Man* in *Publications of the Manx Society*, 1879, vol. XXIX, A. W. Moore, *Sodor and Man*, London, 1893, and Twiss' report in Warren, *Synodalia*, 1853, p. 315. Lists of the bishops in Joseph George Cumming, *The Isle of Man*, London, 1848, appendix P, Robert Keith, *Hist. Catalogue of the Scottish Bishops* Ed. 1824, pp. 293 ff., Le Neve, *Fasti Eccles. Anglic.* Ed. 1854, III. 321 ff. and (from the end of the eleventh century) in Stubbs, *Registrum Sacrum Anglicanum* pp. 150, 183.

The island was perhaps for a time occupied by the Romans. After their departure it was subject at one time to the Irish or Scotch *Scoti*, at another to the Welsh, and temporarily to king Eadwine of Northumbria. With the beginning of the tenth century it fell into the hands of the Northmen, who joined Man and the western isles of Scotland into one kingdom, the limits of which were, however, subject to constant change. For a time the kings of Man were also kings of the Northmen in Ireland. In 1156 the kingdom of Man was divided, its sovereign ceding the greater part of the Scottish isles to the prince of Argyle. Some years later a usurper Reginald supported the rebellious barons in Ulster. In punishment for which king John of England compelled him to do homage (1211–12). Reginald also did homage to Henry III of England and conveyed (probably at the same time) his kingdom to the pope

33 *Hen. VIII* (1541/2) c 31. At the present time the province of

as a fief (21st Sept. 1219). (Document in Rymer, *Foedera* 4th Ed. I, 156; cf. I, 157.) Reginald was overthrown in 1224. In 1230 Olaf, king of Man, did homage to the king of Norway. Magnus, third in succession from Olaf (1252–1265), did homage to Alexander III of Scotland.

According to tradition a bishop was instituted (*circ.* 447?) in Man by Patricius, who converted the islanders; but he must, at any rate, have quitted the island very soon. In the following centuries several bishops of Man are named; but little is known about them. Indeed, it is not quite certain whether bishops did actually exist in Man at that time. For the first bishops of whom more definite information has been preserved (from about 1079) see Haddan and Stubbs, *Counc.* II, pp. 164, 189, Will. of Newburgh (*Rer. Brit. Scr.* No. 82) I, 72 ff., Robert of Torigni (*l.c.* No. 82) IV, 167. According to the last-mentioned, Wimund, consecrated 1109–14, was the first bishop. [Camden, *Britannia*, first in the edition of 1607, p. 839, asserts without giving proofs that a bishop was instituted in Man by Gregory IV (827–44) and many other writers make the same statement, borrowing, it may be, from him. Whence Camden derives the fact is not evident; perhaps he had in view the bull (probably not genuine) of Gregory IV to the archbishop of Hamburg (Jaffé, *Regesta* No. 2574).] Several bishops of Man were consecrated by the archbishop of York, not, however, always without opposition from other quarters. In 1154 pope Anastasius IV confirmed the establishment (1148) of an archbishopric in Trondhjem (Norway), to which, among others, the bishop of the *insulae Suthraie* was made subject (Haddan and Stubbs, *Counc.* II, 229 ff.). This bishopric was, it would seem, identical with the bishopric of Man. The designation of the bishop as *Sodoriensis* is probably derived originally from *Sudereys* (=southern [isles]). [According to Twiss, *l.c.* (without statement of authorities) Honorius IV (1285–87) placed the bishop of Man under the archbishop of Dublin. But the bishops consecrated for Man in 1305, 1321, 1328, 1334 were consecrated by the Norwegian bishops. Stubbs, *Registrum.* Does a confusion arise from the fact that under Honorius III, in 1219 a bishop of Man was consecrated by an archbishop of Dublin?] On the manner of electing bishops (varying in different cases; concerned were at different times—the monks of Furness in Lancashire, the people and clergy of Man, the sovereign of Man and the pope) see Stubbs, *l.c.*, Moore, *l.c.* 59, 67; cf. also part of a bull of Coelestin III, 22nd June, 1194, in W. P. Ward, *Isle of Man* p. 31.

By the treaty of Perth in 1266 the isle of Man passed from Magnus, king of Norway, to Alexander III of Scotland, as also did the islands of West Scotland claimed by the Norwegians and the right of advowson of the bishopric of Man. In connexion with the suzerainty over Scotland arrogated by Edward I, both he and Edward II claimed to dispose of the island, the Scotch kings at the same time maintaining their right. Simultaneously, the local royal house broke into two lines, each contending for the succession. As a matter of fact, the Scotch obtained possession of the island. The rival lines of succession were united by the marriage of William Montacute, earl of Salisbury, with the heiress of the second line. Montacute, aided by Edward III, conquered the island (1343–4) and was crowned king; in 1393 he sold the island and the royal title to William le Scrope, afterwards earl of Wiltshire. As owing to the circumstances mentioned Man had come under English influence, the inhabitants of the west Scottish islands who were included in the bishopric of Man refused obedience to that bishop and elected their own spiritual lords (1380 and onwards). Nevertheless, the bishops of Man continued to designate themselves also as *episcopi Sodorienses*. In 1348 and 1374 bishops of Man were consecrated at Avignon, in the former case by the pope, in the latter, on his behalf. William le Scrope was in 1399 condemned in England for high treason. Thus the island fell to the English king, Henry IV, who bestowed it on Henry Percy, earl of Northumberland. (Document dated 19th Oct. in Rymer, *Foedera* 3rd Ed. III, pt. IV, 165.) Percy was, in his turn, convicted of high treason (1405) and his lands were forfeited to the crown [7 *Hen. IV* (1405/6)]. In the same year of his reign the king gave the island *una cum Patronatu Epis-*

Canterbury embraces twenty-four dioceses,[26] the province of York ten,[27] the district immediately subject to the archbishop being in each case included. Moreover the archbishop of Canterbury has under him a number of bishoprics in the colonies and abroad.

The establishment of the various episcopal sees in England has been by gradual process.

Even in the Roman period British bishops are mentioned. Thus the bishop of London, the bishop of York and a third bishop[28] were present at the council of Arles (314). The effect, however, of settlements of pagan Teutons was to drive the bishops from the eastern parts of the island. In the western parts, which remained Keltic for a longer period, centres of ecclesiastical activity still subsisted and developed by degrees into episcopal seats.[29] In the Anglo-Saxon kingdoms there was at first one bishopric for each kingdom,

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copatus to sir John Stanley, first for life, then in fee to him and his heirs for ever. (Coke, *Inst.* IV, 283 and preamble to 5 *Geo. III* c 26; cf. the document, dated [3rd June] 1405, in Rymer, *Foedera* 3rd Ed. IV, pt. I, 82.) A descendant of Stanley was raised by Henry VII, 1485, to the earldom of Derby. Whether the bishops of Man, in the time from the fourteenth century to the reformation, were subject to any archbishop at all, and if so to which, cannot be precisely ascertained. [According to Twiss, *l.c.*, Man was, on the creation of the archbishopric of St. Andrews, assigned thereto and the attachment to York (by act of 1542) made because St. Andrews was still in the hands of the papists. But this account seems only to rest on an erroneous interpretation of the designation in the bull of 1472 (cf. § 10, note 13) of the assigned bishopric as *Sodorensis sive Insularum* by Polydorus Vergilius, *Angl. Hist.* Book IX: *hujus sedes in Mona insula locata est;* whilst in reality the bishopric, separated from Man since at latest 1380, of the west Scottish isles, whose bishops also retained the title *Sodorenses*, is meant.] A bull of Calixtus III, dated 21st June, 1458, by which the bishopric of Man (*Sodorensis*) and the newly appointed bishop were placed under the archbishop of York, is printed from the Register of the then archbishop of York in *Publications of the Manx Society* IX, 20. Why then an express assignment of the see of Man to the archbishopric of York was made by act of parliament in 1542, has not been explained.

In consequence of dispute during the reigns of Elizabeth and James I as to the inheritance of Man, a new grant was made by letters patent of the latter sovereign. On the manner of appointment to the bishopric under Henry VIII and later, see the report of the royal officials to the king, 17th Feb. 1634. Rymer, *Foedera* 3rd Ed. VIII, pt. IV, 54. In 1735 the island fell by inheritance to the duke of Athole. By 5 *Geo. III* (1765) c 26, in virtue of a (half-forced) agreement with the duke of Athole, some of his sovereign rights (but not the right of advowson of the bishopric) were conveyed to the English crown, compensation being made for their loss. 6 *Geo. IV* (1825) c 34 empowered to the redemption of further sovereign rights. On the basis of this enactment a contract of sale was made by which the crown became possessed of all remaining sovereign rights, including the advowson of the bishopric.

[26] St. Alban's, St. Asaph, Bangor, Bath and Wells, Bristol and Gloucester, Canterbury, Chichester, St. David's, Ely, Exeter, Hereford, Llandaff, Lichfield, Lincoln, London, Norwich, Oxford, Peterborough, Rochester, Salisbury, Southwell, Truro, Winchester, Worcester.

[27] Carlisle, Chester, Durham, Liverpool, Man, Manchester, Newcastle, Ripon, Wakefield, York.

[28] Probably from Caerleon or from Lincoln. Perry, *Hist. of Engl. Ch.* I, 6, notes and illustrations 1, c 1 § 10.

[29] On the origin of the several bishoprics in the British districts see Haddan and Stubbs, *Counc.* I, 142 ff., 702 ff.

except that in Kent a second see was at once created side by side with Canterbury.[30] Acting under the representations of archbishop Theodore the council of Herutford (673) declared itself in favour of multiplying the existing bishoprics. Theodore carried out the work of multiplication on a liberal scale,[31] although in doing so he had to overcome opposition, especially from Wilfrid, bishop of York. In the next centuries there were new creations, unions and removals of sees.[32] About the middle of the twelfth century changes ceased, and the bishoprics then existing continued in the main as they were until the reign of Henry VIII. Wolsey projected the foundation of twenty new sees; but it was not until after his fall and after the breach with the pope that the scheme was realized, and then in a partial form. First, 26 *Hen. VIII* (1534) c 14 regulated and extended the system of suffragan bishops;[33] then, by 31 *Hen. VIII* (1539) c 9, the king was empowered himself to establish new (full) sees in such number as he might think fit.[34] Henry made use of the powers conferred by this act to create six new bishoprics, of which one became extinct in the next reign.[35] A new creation was ordered by act of parliament before Edward's death; but after the accession of Mary the enactment was repealed.[36] From that time onward for nearly three hundred years, apart from the abolition of the whole episcopal constitution in the course of the first revolution, the episcopal sees again remained unchanged. On the other hand,

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[30] Founded were: for Kent, Canterbury and Rochester (on the probably incorrect assumption that the division of Kent into two sees was connected with tribal boundaries see Stubbs, *Const. Hist.* I, 189, note 2 c 7 § 70); for Essex, London; for Northumbria, York (temporarily Lindisfarne instead of York); for Wessex, Dorchester (Winchester); for East Anglia, Dunwich; for Mercia, Lichfield. Sussex was not converted until later, about 680.—On the oldest episcopal sees cf. Stubbs, *Const. Hist.* I, 246 c 8 § 85.

[31] Theodore's division of the diocese of Lichfield also followed political boundaries. Stubbs, *Const. Hist.* I, 123 c 5 § 48; I, 189, note 1 c 7 § 70.

[32] A map, showing the division of England into dioceses at the time of Edward the confessor (1042–66) is given in Freeman, *History of the Norman Conquest* II, 82.

[33] Cf. § 39, note 4.

[34] Cf. § 37, note 19.

[35] Gloucester, Bristol, Peterborough, Oxford, Chester, Westminster. (The latter was from the dissolution of monasteries a collegiate church; from 1540, a bishopric; from 1550, a collegiate church; from 1556–1560, a monastery; in accordance with an unprinted act of 1 *Eliz.* it was by royal letters patent of 21st May, 1560, again transformed into a collegiate church.)—A map exhibiting the division of England into bishoprics in 26 *Hen. VIII* and the changes down to 34 *Hen. VIII* will be found in Hunter (Record Commission), *An Introduction to the Valor Ecclesiasticus of King Henry VIII*, London, 1834. Cf. also on boundaries of bishoprics and sites of monasteries the map in Ch. H. Pearson, *Historical Maps* 2nd Ed. London, 1870, p. 58.

[36] By 7 *Ed. VI* (1552/3) c 10 a part of the county palatine and bishopric of Durham bordering on Newcastle was detached and placed under the secular authorities of Newcastle. The unprinted act 7 *Ed. VI* No. 12 in the Chancery roll, *An Acte for the Dissolucion of the Bysshopprick of Durham, and also for the newe erecting of the same Bysshopprike and one other at Newcastell*, vested the possessions of the hitherto existing bishopric in the king and made provisions for the new creation of two sees. But the act, before its execution, was repealed by 1 *Mar.* st. 3 (1554) c 3, and the bishopric of Durham left intact.

in Scotland there were considerable alterations during the period indicated; moreover, in 1784 began the new creation of Anglican episcopal sees for the (now independent) United States and for the English colonies. In England itself 6 & 7 *Gul. IV* (1836) c 77 formed the first legal basis for a number of changes in existing relations. The act granted powers for a new delimitation by order in council of the dioceses according to certain instructions laid down therein;[37] thus the dioceses of Gloucester and Bristol, of Carlisle and Man, and of St. Asaph and Bangor were to be united, whilst two new sees, Manchester and Ripon, were to be erected. The two new creations designed were afterwards effected; the three unions were in part not carried out, in part again dissolved.[38] Lastly, in recent times six new sees have been established: St. Alban's, Truro, Liverpool, Newcastle, Southwell and Wakefield.[39]

§ 34.

B. HISTORY OF THE PRECEDENCE OF THE ARCHBISHOPS OF CANTERBURY AS AGAINST THE ARCHBISHOPS OF YORK.[a]

In the middle ages a conflict raged between the representatives of the sees of Canterbury and York over the question whether the two were independent of each other and had equal rank, or whether the archbishop of York owed obedience to the archbishopric of Canterbury and had to yield him precedence.[1] The dispute has, in many

[37] The general instructions contained in the act were afterwards, to a slight extent, amended. Cf. *e.g.* 10 & 11 *Vict.* (1847) c 108, 26 & 27 *Vict.* (1863) c 36 s 2. A map, showing the boundaries of the dioceses in 1854, is found in front of the *First Report of the Royal Cathedral Commission* (*Parliamentary Reports*, 1854, vol. XXV).

[38] The first bishop of Ripon was consecrated in 1836. The creation of Manchester was in 1848 in accordance with 10 & 11 *Vict.* (1847) c 108. Cf. Perry, *Hist. of Engl. Ch.* III, 295, notes and illustrations 1 c 16 § 3. Power to unite Carlisle and Man was revoked by 1 & 2 *Vict.* (1838) c 30, to unite St. Asaph and Bangor by 10 & 11 *Vict.* (1847) c 108; the union, already effected, of Gloucester and Bristol was annulled by 47 & 48 *Vict.* (1884) c 66, amended but not materially by 57 & 58 *Vict.* (1894) c 21. As yet, however (1894), the restoration of Bristol as a separate see has not been accomplished, the necessary endowment not having been raised.

[39] St. Albans was founded in accordance with 38 & 39 *Vict.* (1875) c 34; Truro by 39 & 40 *Vict.* (1876) c 54 [cf. *Truro Chapter Act* 41 & 42 *Vict.* (1878) c 44; *Truro Bishopric and Chapter Acts Amendment Act* 50 *Vict.* sess. 2 (1887) c 12]; the four other bishoprics by 41 & 42 *Vict.* (1878) c 68 [cf. *Newcastle Chapter Act* 47 & 48 *Vict.* (1884) c 33]. The see of Liverpool was established in 1880, Newcastle in 1882, Southwell in 1884, Wakefield in 1888. New creations are contemplated.

[1] The position of Canterbury in the dispute is exhibited in particular by Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81), by William of Malmesbury, *Gesta Pontific.* (*Rer. Brit. Scr.* No. 52) and in a short statement printed in *Rer. Brit. Scr.* No. 71, III, 10; that of York by Hugo Sottovagina, precentor of York (in *Rer. Brit. Scr.* No. 71). In addition to their statements a large number of

[a] Hinschius, *Kirchenrecht* I, 616 ff.

respects, exercised influence on the development of the constitution of the church in England, and its issue has determined the present position of the two English archbishops towards each other.

The contest began in the year 1070, shortly after the Norman conquest.[2] When Thomas I, appointed archbishop of York, approached Lanfranc to obtain consecration, the latter laid down as a condition the taking of an oath of obedience to the see of Canterbury. This Thomas refused. Lanfranc rested his claim on old usage, the existence of which Thomas denied.[3] Ultimately Thomas

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documents relating to the contest have been preserved. Cf. especially the full account of the points at issue in the letter of Ralph, archbishop of Canterbury, to pope Calixtus II in the year 1119 (printed in *Rer. Brit. Scr.* No. 71) II, 228.

[2] Cf. from earlier times *Carta* of king Edgar: *Ut Ecclesia Christi in Dorobernia aliarum Ecclesiarum regni nostri mater sit et Domina, . . .* (printed in Spelman, *Concilia* I, 432 '*e M. S. Cod. Eccl. Cant.*' and in Wilkins, *Concilia* IV, 775. The document is dated 958; in it Edgar is entitled *Rex Anglorum*, Dunstan *archipontifex*. But Dunstan only became archbishop in 959, and it is only from that year, after the union of the parts of the kingdom held by Eadwi and Edgar, that the latter is designated by writers *Rex Anglorum*. Spelman *l.c.*). Osbern, *Vita Dunstani* (*Rer. Brit. Scr.* No. 63) p. 108 reports: . . . *rex Edgarus . . . Dunstanum . . . primae metropolis Anglorum primatem ac patriarcham instituit.* p. 109: *Dunstanus . . . a Romano pontifice . . . universae Anglorum genti necnon et aliis regionibus Anglorum regno suppositis patriarcha destinatus, . . .* Similar expressions are, however, not found in the older biographies of the writer B and of the monk Adelard (*Rer. Brit. Scr.* No. 63).

The oath of obedience which is said to have been taken in 796 by an archbishop of York to an archbishop of Canterbury, was in reality taken not by an archbishop of York, but by a bishop of Lindsey. The word *Eboracensis* after the name of the bishop in the document is a forgery. (Haddan and Stubbs, *Counc.* III, 506, 507, note *b.*)—Cf. also below, note 3.

[3] A full account of the negotiations which took place at the time, with documents cited, is given in William of Malmesbury, *Gesta Pontificum* (*Rer. Brit. Scr.* No. 52) Book I §§ 25–42. For the documents see also Eadmer, *l.c.* pp. 261 ff. These documents are: 1, Letter of Boniface IV to king Aethilbert, 610; 2, of Boniface V to archbishop Justus, 624–5; 3, of Honorius to archbishop Honorius, 634; 4, of Vitalianus to archbishop Theodore, 669; 5, of Sergius to the kings of England, Aethelred, Aelfrid and Aldulf, 693; 6, of Sergius to the English bishops, 693; 7, of Gregory III to the English bishops, 733; 8, of Leo III to archbishop Aethelard, 797; 9, of Formosus to the English bishops, 905; 10, of John XII to Dunstan, 960.—These were first produced by Lanfranc in support of his claim in 1072. It is probable that they are not, in their present form, genuine, but are alterations of letters actually sent by the popes. See more in Haddan and Stubbs, *Counc.* III, 65, note. The genuineness of the documents was disputed even by contemporaries. Thus in a letter of the chapter of York (1108) in Hugo Cantor (*The Historians of York; Rer. Brit. Scr.* No. 71) II, 113: *Denique decanus, quando fuit Romae cum Girardo archiepiscopo, sicut ipse testatur, a cancellario Romanae ecclesiae diligenter perscrutatus est de contentione harum ecclesiarum, quid inde Roma sentiret, et quid in decretis suis haberet, at ille dixit, Romam nec aliud sentire, nec habere quam quod in registro Beati Gregorii scriptum est.* See also Hugo, *l.c.* 204.—In the questionable letters compare especially the express alteration of Gregory's regulations in what professes the letter of Boniface V to Justus, archbishop of Canterbury (624–5): (Haddan and Stubbs, *Counc.* III, 74): . . . *firmamus, ut in Dorobernia civitate* (*i.e.* Canterbury) *semper in posterum metropolitanus totius Britanniae locus habeatur, omnesque provinciae regni Anglorum praefati loci metropolitanae Ecclesiae subjiciantur immutilata perpetuaque stabilitate decernimus.*

promised obedience to Lanfranc, with the reservation attached, that he would only obey the successors of Lanfranc if the pope decided to that effect.[4] The two archbishops now journeyed to Rome and appealed for papal determination of the issue. But the pope referred the question for solution in England; and in the year 1072 assemblies[5] took place in Winchester and Windsor, which are said to have pronounced in favour of Canterbury.[6] It is doubtful whether the following archbishop of York, Gerard (1101), made any vow of obedience.[7] Gerard's successor, Thomas II, after seeking escape in

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[4] The words of Thomas's declaration are in William of Malmesbury, *Gest. Pont. l.c.* p. 42, according to a document of Lanfranc, and also in *Rer. Brit Scr.* No. 71, III, 13: . . . *tibi quidem sine conditione, successoribus vero tuis conditionaliter obtemperaturum me esse promisi.* According to Hugo Cantor, *l.c.* 101, the declaration ran: *Tibi subjectus ero, quamdiu vixeris, successoribus tuis minime, nisi judicante summo pontifice.* Compare also the mention of the declaration in the document of 1072, below, note 6.

[5] According to Freeman, *Hist. of Norman Conquest* IV, 358, the Winchester meeting was a purely ecclesiastical assembly, the Windsor, a general gemot of the whole nation. Perry, *Hist. of Engl. Ch.* I, 164, note 3 c 11 § 6 makes the former general, the latter ecclesiastical.

[6] Report of Lanfranc to Alexander in *Epist. Lanfranci* (ed. Giles) No. 5, p. 23. But according to Hugo Cantor, *l.c.* 101, the document drawn up was only a forgery by the monks of Canterbury.—The document runs (it is printed in Wilkins I, 324, in the report in *Rer. Brit. Scr.* No. 71, III, 10, in Eadmer, *l.c.* p. 252 [according to Rule p. lvi inserted by Eadmer *after* the first edition of his work]; the same document is also in *Rer. Brit. Scr.* No. 85, III, 351 [with a smaller number of signatures and one variation in respect of them] and, derived from a document of Lanfranc, in William of Malmesbury, *l.c.* p. 42 [without signatures]): . . . *Et tandem aliquando diversis diversarum scripturarum auctoritatibus probatum atque ostensum est, quod Eboracensis ecclesia Cantuariensi debeat subiacere, eiusque archiepiscopi, ut primatis totius Britanniae, dispositionibus in iis quae ad Christianam religionem pertinent in omnibus oboedire. Subjectionem vero Dunelmensis, hoc est Lindisfarnensis, episcopi atque omnium regionum a terminis Licifeldensis episcopi et Humbrae magni fluvii usque ad extremos Scotiae fines, et quicquid ex hac parte praedicti fluminis ad parochiam Eboracensis ecclesiae jure competit, Cantuariensis metropolitanus Eboracensi archiepiscopo ejusque successoribus in perpetuum obtinere concessit. Ita ut si Cantuariensis archiepiscopus concilium cogere voluerit, ubicunque visum ei fuerit, Eboracensis archiepiscopus sui praesentiam cum omnibus sibi subjectis ad nutum ejus exhibeat et ejus canonicis dispositionibus obediens existat. Quod autem Eboracensis archiepiscopus professionem Cantuariensi archiepiscopo facere etiam cum sacramento debeat, Lanfrancus Dorobernensis archiepiscopus ex antiqua antecessorum consuetudine ostendit, sed ob amorem regis Thomae Eboracensi archiepiscopo sacramentum relaxavit, scriptamque tantum professionem recepit; non praejudicans successoribus suis, qui sacramentum cum professione a successoribus Thomae exigere voluerint. Si archiepiscopus Cantuariensis vitam finierit, Eboracensis archiepiscopus Doroberniam veniet, et eum qui electus fuerit cum caeteris praefatae ecclesiae episcopis, ut primatem proprium, jure consecrabit. Quod si Eboracensis archiepiscopus obierit, is qui ei successurus eligitur, accepto a rege archiepiscopatus dono, Cantuariam vel ubi Cantuariensi archiepiscopo placuerit accedet, et ab ipso ordinationem more canonico suscipiet . . .*

[7] At any rate he did not do so at his translation from Hereford to York (1101), for which no consecration was necessary. According to Hugo Cantor, *l.c.* 110, 114, Gerard promised Anselm soon afterwards: *se reversurum* (from Rome) *quicquid juste debebat ei facturum.* At the council of Westminster (1102) Gerard, according to the same writer, overturned the raised seat prepared

vain, was compelled to yield; his profession of obedience was drawn up and secured by the king's seal (1109).[8] Pope Paschal II had at Anselm's desire given him an undertaking by letter of the 12th of October, 1108, that the pallium should not be bestowed on Thomas II so long as the oath of obedience remained untaken.[9] The next priest preferred to York, Thurstan, refused the oath even more stubbornly than his predecessor. When the negotiations between the archbishops, the pope and the king had been protracted for five years and Thurstan found himself still unable to obtain consecration, he repaired in 1119 to Rheims, where Calixtus II was holding a synod. There the pope consecrated him, formal reservation being made of right possibly residing in the archbishop of Canterbury.[10] Further negotiations between the pope and the archbishops ensued.

Meanwhile William of Corbeuil had become archbishop of Canterbury. With the end of the year 1125 both archbishops appeared in Rome in order to press in person for a settlement of the dispute by the pope. It is doubtful whether any final decision of the kind was obtained.[11] On the other hand, it is certain that the then

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for Anselm and succeeded in having seats of equal height placed for the two archbishops. According to Eadmer, *l.c.* 187, Gerard, however, promised in 1107 *sua manu imposita manui Anselmi, interposita fide sua . . . , se eandem subjectionem et oboedientiam ipsi et successoribus ejus in archiepiscopatu exhibiturum, quam Herefordensi ecclesiae ab eo sacrandus antistes illi promiserat.* Hugo Cantor makes no mention of such an occurrence. Cf. also William of Malmesbury, *Gest. Pont.* 259, and *Rer. Brit. Scr.* No. 71, III, 15.

[8] According to Eadmer, *l.c.* 210, who gives the words, the only reservation was of allegiance to the king and obedience to the pope. Hugo Cantor, *l.c.* 124, states that it was expressly declared and put on record through the king that no prejudice was to be done to subsequent archbishops of York.

[9] Anselm's letter to the pope and the latter's answer are printed in Mansi, *Concilia* XX, 1022, 1023 and in Migne, *Patrologiae Cursus* vol. 150 p. 184 lib. III nu. 152 and vol. 163 p. 245 nu. 240. In the course of the dispute the popes sided now with Canterbury, now with York, so that the bulls are frequently contradictory.

[10] Eadmer, *l.c.* 257: To the protest of the archdeacon of Canterbury that only the archbishop of Canterbury—not the pope—had the right to consecrate Thurstan, the pope replies: *Nullam injustitiam ecclesiae Cantuariensi facere volumus, sed, salva justitia et dignitate illius, quod proposuimus exsequemur.* Similarly William of Malmesbury, *Gesta Pontificum* (*Rer. Brit. Scr.* No. 52) p. 262 Book III § 124. According to Hugo Cantor, *l.c.* 165, the pope's utterance ran: *Quod facio, semper salva justitia Cantuariensis ecclesiae, si qua est, facio.*

[11] Undated bull of Honorius II to Thurstan in Wilkins, *Conc.* I, 407 (*ex reg. Grenefeld arch. Ebor.* [in the years 1306–15] fol. 46. Wilkins seems to assume that this bull was given to the legate John of Crema in 1125 to bring with him, and that the council of London, held by the legate on 9th Sept. 1125 followed): *Antiquam sane Eboracensis ecclesiae dignitatem integram conservari auctore Deo cupientes, auctoritate apostolica prohibemus, ne ulterius aut Cantuariensis archiepiscopus Eboracensis professionem quamlibet exigat, aut Eboracensis Cantuariensi exhibeat; neque, quod penitus a beato Gregorio prohibitum est, ullo modo Eboracensis Cantuariensis ditioni subjaceat, sed juxta ejusdem patris constitutionem, ista inter eos honoris distinctio in perpetuum conservetur, ut prior habeatur, qui prior fuerit ordinatus . . .* —According to Hugo Cantor, *l.c.* 214, the presence of the archbishops at Rome led to no final decision before the papal court: *Multorum intercessionibus, et de die in diem*

archbishop of Canterbury by nomination as papal legate [12] (25th January, 1126) received for himself personally—not for his successors—the character of a superior as compared with the archbishop of York.[13]

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dilationibus et suspensionibus vix obtentum est ut salva cuique causa eis regredi liceret. With this would agree the statement of Simeon of Durham (*Rer. Brit. Scr.* No. 75) II, 281: *Willelmus quidem legatus Apostolici per Angliam, sed Turstinus in statu quo fuerat revertitur.*—Cf. also below, note 14, on the confirmation of the bull of Honorius given above and of an earlier bull of Calixtus (1119–24) by a bull of Alexander III in 1176.

[12] Bull of Honorius II to bishops, abbots, barons and clergy in England and Scotland (Wilkins I, 409; on the date see Haddan and Stubbs, *Counc.* II, 23): . . . *charissimo fratri nostro Guilielmo, Cantuariensi archiepiscopo, in Anglia et Scotia commisimus, quatenus constitutus illic a nobis apostolicae sedis legatus, . . . corrigenda corrigere, et firmanda valeat . . . confirmare . . . Dat. Lateran. 8 cal. Febr.*

[13] The archbishops of Canterbury had even before 1126 claimed the rights of legates. They accounted themselves, in virtue of the right attached to the dignity of archbishop of Canterbury and without special papal nomination, *legati nati.*

Letter of Anselm to Paschal II (Migne, *Patrologiae Cursus* vol. 159 p. 201. Among the letters of Anselm, Book IV, No. 2): . . . *Quando Romae fui, ostendi praefato domino papae* (Urban II) *de legatione Romana super regnum Angliae, quam ipsius regni homines asseverant ab antiquis temporibus usque ad nostrum tempus Ecclesiam Cantuariensem tenuisse . . . Legationem vero quam usque ad nostrum tempus, secundum praedictum testimonium, Ecclesia tenuerat, mihi domnus papa non abstulit. Audivi tamen quod, dum eram pro fidelitate sedis apostolicae in exsilio, legationem ipsam archiepiscopo Viennensi vestra commendavit auctoritas . . . Quapropter supplex oro . . . , ne meo tempore Ecclesia . . . privetur ea dignitate quam ante me in antecessoribus meis se possedisse a vestra sede pronuntiat.*

Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 126: *Eodem anno venit in Angliam Guido archiepiscopus Viennensis, functus, ut dicebat, legatione totius Britanniae ex praecepto et auctoritate apostolicae sedis* (year 1100). *Quod per Angliam auditum in admirationem omnibus venit, inauditum scilicet in Britannia cuncti scientes, quemlibet hominum super se vices apostolicas gerere, nisi solum archiepiscopum Cantuariae. Quapropter sicut venit ita reversus est, a nemine pro legato susceptus, nec in aliquo legati officio functus.* [Cf. also Eadmer, *l.c.* 76, *vicis apostolicae . . . auctoritate.*]

Gervasius, *Actus Pontificum* (*Rer. Brit. Scr.* No. 73) II, 382: *Toti enim regno Anglorum et circumjacentibus regionibus cunctis notissimum est, eatenus a primo Cantuariensi metropolitano sanctissimo, videlicet Augustino, usque ad istum Willelmum, omnes ipsius Augustini successores, monachos, primates, et patriarchas nominatos et habitos, nec ullius unquam Romani legati ditioni addictos.*

It appears that the archbishops, by laying stress on their position as *legati nati*, sought to assure themselves of a certain independence of the pope and a right to object to the sending of other legates. But their position remained undefined, and the popes seem not to have generally recognized it. According to Richter, *Kirchenrecht* § 128 the terms *legatus natus* and *primas* were, from the false decretals of Isidore (about the middle of the ninth century), used as equivalent, to designate the relation of the holder of the titles respectively to those above him and those below him.

From later times cf. the bull of Martin V to Chichele, archbishop of Canterbury in 1426, in which the latter was suspended from his legatine office (Wilkins, *Concilia* III, 484): . . . *ad nostram . . . pervenit notitiam, quod tu, qui ad defensionem ecclesiae jurium, et honorum sedis apostolicae in provincia tua Cantuariensi legatus natus existis, . . .* Pole, after he had become archbishop (1556) calls himself at first sometimes *legatus natus*,

From this time onward the contention that the archbishops of York should acknowledge those of Canterbury as their ecclesiastical superiors apart from the legatine capacity of the latter and that they had to swear obedience to them, was never very strongly urged and, from the end of the twelfth century, not renewed.[14]

That the conferment of legatine powers by the pope made the recipient the superior of the other archbishop, was always acknowledged by both archbishops. The archbishops of Canterbury now endeavoured to ensure their ascendency by the indirect means which William of Corbeuil had essayed: they desired the legation for each new occupant of the see. But the archbishops of Canterbury during the twelfth century in general only received the commission after long delays.[15] Not until the beginning of the thirteenth

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sometimes *legatus a latere* [the latter *e.g.* in a document of 8th Jan. 1557 (Wilkins, *Concilia* IV, 148), the former in a document of 8th April, 1556 (Wilkins, *Concilia* IV, 143)]; after the pope had deposed him from his office as legate (cf. § 6, note 51), he only uses *legatus natus* [*e.g.* in documents of 20th July, 1557 (Wilkins IV, 153), 10th Dec. 1557 (Wilkins IV, 155), 25th March, 1558 (Wilkins IV, 171)]; in his will, dated 4th Oct. 1558 (*Epist. Poli*, Brixiae, 1744 ff. V, 181) he calls himself *Apostolicae Sedis Legatus.*

[14] On the discussions on the occasion of Becket's consecration to the archbishopric of Canterbury (1162) cf. Gervasius, *Chronica* (*Rer. Brit. Scr.* No. 73) I, 170: *Archiepiscopus enim Eboracensis per internuntios licet absens dicebat, consecrationem illam sibi de jure dignitatis antiquae contingere, seque ad exequendum esse paratum si novo electo caeterisque placeret. Fatentur quoque episcopi* (of the southern province) *Eboracensem archiepiscopum de jure antiquo debere Cantuariensem electum consecrare, quod et eidem de facili concederent, si tamen Cantuariensi ecclesiae juste restitueret quam injuste subtraxerat, canonicam scilicet subjectionem et tam debitam quam privilegiatam professionem.* This the archbishop of York refused; the consecration then took place without his co-operation.

The rule laid down by Honorius in the bull cited above (note 11) was repeated in almost the same terms in a bull of Alexander III in 1176 (Rad. de Diceto, *Ymagines Hist.*; *Rer. Brit. Scr.* No. 68; I, 406): *Calixti, Honorii, Innocentii et Eugenii Romanorum pontificum vestigiis inhaerentes.*

Cf. also the resolutions of the convocation of the northern province at *Ripon*, 1306 (Wilkins, *Conc.* II, 285): . . . *Cum itaque Eborum archiepiscopus Angliae primas, praeter Romanum pontificem, in spiritualibus superiorem non habeat, ac ipsa mater Eborum ecclesia honore primatiae illustretur, gaudeat plenius, ut est notum; hac sacra synodali constitutione proinde duximus statuendum, ut nullus clericus, vel laicus, secularis, vel religiosus, seu etiam quaecunque universitas . . . in causa, lite, vel negotio, cujuscunque rei nomine, vel ipsius occasione, in nostris dioecesi, vel provincia existentis sit constitutus, vel etiam in quacunque alia causa, vel negotio . . . quae vel quod ex nostra dioecesi, vel provincia trahit originem, seu cujuscunque nomine reus, in nostris dioecesi, vel provincia forum sortiri poterit, . . . curiam Cantuariensem . . . provocet vel appellet, seu archiepiscopo Cantuariensi, officiali ejusdem curiae, vel etiam cuicunque alii, auctoritate alicujus eorum, non ex delegatione apostolica procedenti, in hujusmodi appellationibus, seu provocationibus obediat quovismodo; . . .*

[15] Stubbs, *Const. Hist.* III, 307 f. c 19 § 380, deals with legation committed to the archbishops; from him the following dates in the twelfth and thirteenth centuries are for the most part taken:—

On the death of William of Corbeuil (1136), bishop Alberic of Ostia was sent temporarily to England. On 8th Jan. 1139, Theobald was consecrated archbishop of Canterbury: not he, but his rival in the contest for the episcopal seat, Henry, bishop of Winchester, was appointed legate. [1st March, 1139.

century does it appear to have become customary for them to be invested with legatine powers as soon as their election was recog-

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William of Malmesbury, *Hist. Nov.* Book II § 471: *Lectum est primo in concilio decretum Innocentii papae, quo jam a Kalendis Martii, si bene commemini, partes sollicitudinis suae idem apostolicus domino episcopo Wintoniensi jure legationis in Anglia injunxerat.* Cf. also John of Salisbury, *Epist.* 89, *Ann. de Wintonia* (*Rer. Brit. Scr.* No. 36) II, 50, John of Hexham (*Rer. Brit. Scr.* No. 75) II, 300.] The legation of Henry of Winchester was extinguished by the death of Innocent II (1130–43) and was not renewed by the following popes, Coelestin II (1143–44), Lucius II (1144–45) and Eugenius III (1145–53). The last mentioned, in or before 1150, bestowed the office on archbishop Theobald. Becket, who came next (consecrated in 1162), did not receive the commission in his first years of office. But in connexion with his quarrel with the king, the latter succeeded in inducing the pope to send him, though with reservations, a document conferring legatine authority on Roger, archbishop of York. The actual conferment of legatine powers did not, however, take place. (See below, note 18.) On 24th April, 1166, Becket was appointed legate, but even then the province of York was excepted from the exercise of his powers. The document appointing him is in *Materials for the History of Becket; Rer. Brit. Scr.* No. 67; V, 328: . . . *nos tibi legationem totius Angliae, excepto episcopatu Eboracensi, benigno favore concedimus.* . . . Cf. further the—separate—conferment of the primacy in the bull of Alexander III to Becket (printed in *Materials for Hist. of Becket; Rer. Brit. Scr.* No. 67; V, 324 and Wilkins, *Conc.* I, 446; the bull bears the date 8th April, 1167; on the questions whether this date is false and whether the bull is to be assigned to 1166 or 1167 see Robertson in *Materials, l.c.*, note *a* and Stubbs, note 1 to Ralf de Diceto, *Ymagines Historiarum*, *Rer. Brit. Scr.* No. 68, I, 330): . . . *Thoma archiepiscope, de fratrum nostrorum consilio tuis justis petitionibus debita benignitate duximus annuendum, atque praedecessorum nostrorum felicis recordationis Paschalis et Eugenii, Romanorum pontificum, vestigiis inhaerentes, tam tibi quam tuis legitimis successoribus Cantuariensis ecclesiae primatum ita plenum concedimus sicut a Lanfranco et Anselmo aliisque ipsorum praedecessoribus constat fuisse possessum* . . . (Cf. for similar, earlier conferments, note 20, below.) On the following archbishop of Canterbury, Richard of Dover, the legation was bestowed directly after his coronation, apparently only for the province of Canterbury, the right of *primas* being conferred separately. (Report of bishop designate of Bath to Henry II, 5th May, 1174, in Benedict [*Rer. Brit. Scr.* No. 49] I, 69: . . . *domini papae duritia adeo est emollita, quod domini Cantuariensis electi electionem solemniter in praesentia omnium confirmavit; eumque etiam confirmatum, Dominica sequenti consecravit. Consecrato pallium die tertia dedit, et modici temporis spatio excurrente primatiam addidit. Nos praeterea desiderantes ipsum habere plenissimam potestatem vindictam ecclesiasticam exercendi in homines regni vestri* . . . , *multa sollicitudine obtinuimus quod dominus papa eidem provinciae suae legationem indulsit.*) The succeeding archbishop Baldwin likewise became at once papal legate. He, like Richard I, took part in the crusade, leaving England on 6th March, 1190. William Longchamp, bishop of Ely, was in March, 1190, appointed chief justiciar and regent, on 5th June in the same year he was also made papal legate for all England (bull in Rad. de Diceto, *Rer. Brit. Scr.* No. 68, II, 83). The death of pope Clement III (end of March, 1191) put an end to his legation. On the questions whether Coelestin III renewed the commission and how long Longchamp remained legate see Stubbs, in *Epistolae Cantuarienses*, *Rer. Brit. Scr.* No. 38, vol. II, p. lxxxiii, note 1. Archbishop Baldwin died on the crusade. The following archbishop of Canterbury, Reginald Fitz Jocelin, died a few weeks after his appointment to the see. After him Hubert Walther (consecrated 1193) became archbishop, but did not receive the legation—it was for all England—until 18th March, 1195 (bull in Rad. de Diceto, *l.c.* II, 125 and Hoveden, *Rer. Brit. Scr.* No. 51, III, 290) and

nized in Rome.[16] The countermeasure of the archbishops of York was to endeavour to induce the pope to confine the legation of the archbishops of Canterbury to the province of Canterbury;[17] moreover, some archbishops of York even in the twelfth and thirteenth centuries obtained legatine powers for themselves,[18] and, after John of Thoresby (archbishop of York from 1352 to 1373) had been ap-

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only remained legate up to the death of Coelestin III (1198). Stephen Langton, the successor of Hubert Walther, was appointed to the legatine office. In 1221 he received from Honorius III (1216–1227) the promise that after the recall of the *legatus a latere* Pandulf, no other such *legatus* should be sent to England during his (Langton's) lifetime. *Annales de Dunstaplia* (*Ann. Monastici; Rer. Brit. Scr.* No. 36) III, 74: *Eodem anno* (1221) *Stephanus, Cantuariensis archiepiscopus, Romam profectus, cum gloria et honore reversus est. Et . . . impetravit . . . quod legatus in vita ipsius nequaquam in Anglia mitteretur.* Pandulf was recalled in the summer of 1221.—Cf. also the ordinance of Clement IV (1265-68) in *Lib. Sextus* I tit. XV c 2: *Legatos, quibus in certis provinciis committitur legationis officium . . . ordinarios reputantes, praesenti declaramus edicto, commissum tibi a praedecessore nostro legationis officium nequaquam per ipsius obitum exspirasse.*

[16] Stubbs, *Const. Hist.* III, 308 c 19 § 380.

[17] Compare *e.g.* above, note 15 in regard to Becket (*totius Angliae, excepto episcopatu Eboracensi*) and Richard of Dover (*provinciae suae legationem*). In the appointment of Hubert declaration is made that it is to hold good in spite of privilege of York conflicting therewith.

[18] When pope Alexander III refused Henry II the confirmation of the constitutions of Clarendon, the king again demanded the confirmation of them and the nomination of the archbishop of York as legate of all England. The pope rejected the former request; not to make the king too angry, he sent him, however, a legatine appointment for the archbishop of York, but caused the king's envoys to promise him that the appointment should only be delivered to the archbishop upon receipt of papal consent. At the same time the pope wrote on 27th February, 1164, to Becket, that if the king should deliver the commission without consent given, he (the pope) would exempt the archbishop of Canterbury and his province from the scope of the legation. Henry sent the commission back to the pope on the ground that it had not been desired by the royal envoys upon the condition specified. The pope—whose position, meanwhile, had been secured by the death of the antipope Octavian (20th April, 1164)—kept the document and gave no new legatine appointment. Letters of Alexander III to Becket, *Mat. for Hist. Becket, l.c.* V, 85 and 87. Reports of Becket's agent at the papal court, *l.c.* V, 80 and 94. Letter of the bishop of Poitou to Becket, *l.c.* V, 112. Roger de Hoveden (*Rer. Brit. Scr.* No. 54) I, 223. Gervasius, *Chronic.* (*Rer. Brit. Scr.* No. 73) I, 181.—It is not quite clear whether Roger was subsequently, on the ground of the appointment never delivered, regarded nevertheless by the pope as legate. He is not designated legate, *e.g.* in letters of Alexander III to him in 1166 (*Materials, l.c.* V, 323) and 16th Sept. 1170 (*l.c.* VII, 364); on the other hand he is for the most part so designated in letters of 1170 and afterwards (*e.g.* Alexander III to Roger, 18th Feb. 1170, *Materials* VII, 213; Becket to Roger, 1170, *Materials* VII, 263, 324; Roger to the bishop of Durham and others, 1171, *Materials* VII, 504; Alexander III to Roger, 1175–6, *Materials* VII, 568; Alexander III to Roger, 1176, Haddan and Stubbs, *Counc.* II, 244). The legation in Scotland was apparently only conferred on him in 1181 (Haddan and Stubbs II, 254, from Hoveden II, 211 and Benedict I, 263).—In 1188 the pope gave the Scottish bishops the assurance (aimed especially against the archbishop of York) that in future no one but a Scotchman or a special envoy from the *entourage* of the pope should be entrusted with the office of legate in Scotland. (Cf. § 10, note 11.)—Archbishop Walter de Gray of York (1215–55) is designated *apostolicae sedis legatus* in a MS. printed in Wilkins, *Conc.* I, 698.

pointed to the office, they almost all held it,[19] so that the claim of the archbishops of Canterbury to superiority lost from this time even such weight as it possessed in virtue of the papal commission.

But the archbishops of York were not content with denying that the archbishops of Canterbury were their superiors; they claimed, positively, equal rank and equal privileges. The archbishops of Canterbury had at the end of the eleventh century assumed the title of primates of Britain. Apparently they could in respect to this title and the precedence implied by it appeal with greater justice to old grants than in respect to the official superiority to which they also pretended. Moreover, their right to the title had been, from the beginning of the twelfth century, repeatedly confirmed by the popes.[20] As early as Thomas I and Gerard of York opposition had been offered to this claim of the archbishops of Canterbury.[21] The events of 1126 alluded to above had not settled the question of rank. The dispute turned, in the main, on the right to assist at the coronation of the king, to fill the place of honour at assemblies, and to have the archiepiscopal cross borne in front even in the neighbour's province.[22] The controversy

[19] According to Stubbs, *Const. Hist.* III, 310, note 1 c 19 § 380 the constant conferment from 1352 of the legatine office on the archbishops of York is perhaps connected with the settlement of the dispute then reached (cf. below, note 25).—According to Wilkins, *Conc.* III, 662, Thomas Rotheram and Thomas Savage were not legates.

[20] Letter of Paschal II to Anselm, 15th April, 1102 (Jaffé 5908, Wilkins, *Conc.* I, 379 f.): . . . *Quem* [*scil. primatum*] . . . *ita fraternitati tuae plenum et integrum confirmamus, sicut a tuis constat praedecessoribus fuisse possessum; hoc personaliter adjicientes, ut quamdiu regno illi religionem tuam divina misericordia conservaverit, nullius unquam legati, sed nostro tantum debeas subesse judicio.* Paschal II to Anselm, 16th Nov. 1103 (Jaffé 5955, Eadmer, *Hist. Nov.* 154): . . . *Quondam* . . . *Cantuariensis ecclesiae primatum ita tibi plenum concessimus, sicut a tuis constat praedecessoribus fuisse possessum. Nunc autem, petitionibus tuis annuentes, tam tibi quam tuis legitimis successoribus eundem primatum, et quicquid dignitatis seu potestatis eidem sanctae Cantuariensi seu Dorobernensi ecclesiae pertinere cognoscitur,* . . . *confirmamus, sicut a temporibus Beati Augustini praedecessores tuos habuisse apostolicae sedis auctoritate constiterit.*—Eugenius III (1145–53) to Theobald in *Registr. Cant. A* 34 (quoted *Materials, Rer. Brit. Scr.* No. 67 V, 324); Alexander III to Becket and Richard of Dover (above, note 15).

[21] According to Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 42, in the document setting forth the election of archbishop Anselm, the see of Canterbury had been designated *totius Britanniae metropolitana*; but in consequence of the opposition of archbishop Thomas I of York, this had been changed to *totius Britanniae primas*. According to Hugo Cantor, *l.c.* 104, 113, the phrase originally ran *primas totius Britanniae*; but Thomas ultimately consecrated Anselm only as *metropolita* (*archiepiscopus*) *Cantuariensis*.—On Gerard see note 7.

[22] In connexion with these disputes as to rank the following circumstances are to be mentioned:—

Immediately after the return from Rome, Christmas, 1126, a dispute arose upon occasion of a royal coronation. Gervasius, *Act. Pontificum* (*Rer. Brit. Scr.* No. 73) II, 382: *Willelmus archiepiscopus in Angliam reversus in Nativitate Domini regem coronavit Henricum apud Windlesore, ubi cum Eboracensis episcopus aequalitate Cantuariensis archiepiscopi regem vellet coronare, judicio omnium repulsus est, et ad eum coronam regni non pertinere una omnium sententia concorditer promulgatur. Lator insuper crucis, quam in*

lasted until the middle of the fourteenth century. Meanwhile the

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regis capellam se coram fecit deferri, extra capellam cum cruce ejectus est. In similar words Gervasius, *Gesta Regum* (*Rer. Brit. Scr.* No. 73) II, 70. According to Hugo Cantor, *l.c.* 217, the archbishop of York yielded of his own accord.

In 1163 the archbishop of York appealed to the pope, because Becket had sought to prevent him erecting his cross in the southern province. (Letter of Becket to pope Alexander, *Materials for Hist. Becket*, *Rer. Brit. Scr.* No. 67, V, 44. Cf. *l.c.* V, 47, 60, 67, 68, 69, 82, 131.)

The question of precedence was discussed without result at the council of London (Westminster) 1175 (Benedict, *Rer. Brit. Scr.* No. 49, I, 89. Hoveden, *l.c.* No. 51, II, 77). The archbishop of York therefore again appealed to the pope against the archbishop of Canterbury. The king, however, arranged in 1175 at Winchester, the legate Hugo being present, a year's peace between the archbishops, within which time the archbishop of Rouen and the neighbouring French bishops were to arbitrate. (So Benedict I, 104 in the text approved in the *Rer. Brit. Scr.* edition. But according to another reading and to Hoveden [*Rer. Brit. Scr.* No. 51] II, 86 the five years' peace was then concluded; they then repeat the same in the next year.) Nevertheless, in the following year at the council held at London by legate Hugo, the two archbishops contended for the post of honour. [Violence was used; the details are given variously. Compare *e.g.* Gervasius, *Chronic.* (*Rer. Brit. Scr.* No. 73) I, 258, *Acta Pont. l.c.* II, 398; Benedict, *l.c.* I, 112; Hoveden, *l.c.* II, 92; William of Newburgh (*Rer. Brit. Scr.* No. 82) I, 203; Rad. de Diceto (*Rer. Brit. Scr.* No. 68) I, 405.] There was again an appeal to the pope, but the quarrel was again, for the present, settled by the king, this time at an assembly of clergy and laity at Winchester, 1176, and a five years' peace was concluded between the archbishops until the issue of the decision of the arbiters (Benedict, *l.c.* I, 118. Hoveden, *l.c.* II, 99).

In March, 1192, Geoffrey of York bore his cross in the southern province; the bishops of that province threatened, if he should continue to do so, to break the cross, and the bishop of London *Novum Templum, in quo archiepiscopus hospitatus fuerat, a divino suspendit officio et a campanarum sonitu* (Benedict, *Rer. Brit. Scr.* No. 49; II, 238); in the spring of 1194 the archbishops were at variance, first because the archbishop of Canterbury bore his cross in the northern province, then because the archbishop of York bore his in the southern. The archbishop of Canterbury appealed to the pope (Hoveden, *Rer. Brit. Scr.* No. 51, III, 239, 250, cf. 246).

On the papal bulls of the twelfth century, according to which seniority in respect of ordination should determine rank, see notes 11 and 14; on the bulls —hard to reconcile with the preceding—by which primacy was to belong to the archbishops of Canterbury, see note 20.

In 1221 Langton received a papal privilege, *Annal. de Dunstaplia* (*Rer. Brit. Scr.* No. 36; *Ann. Monastici*) III, 74: *Eodem anno* (1221) *Stephanus, Cantuariensis archiepiscopus, Romam profectus, cum gloria et honore reversus est. Et, ne Eboracensis extra provinciam suam in Anglia crucem portaret, impetravit; . . .*

On the dispute as to precedence at the council of London held by legate Otho in 1237, see Matth. Paris (*Rer. Brit. Scr.* No. 57) III, 416.

In 1279, after a long respite, the controversy was revived. Archbishop Wickwane of York, on his return from Rome, caused his cross to be carried before him on his progress through the province of Canterbury. The archbishop of Canterbury's servants tore the cross with violence from the bearer and broke it; the archbishop of Canterbury forbade the sale of provisions to the archbishop of York. *Annales de Oseneia* and *Chron. Thom. Wykes* (*Rer. Brit. Scr.* No. 36; *Ann. Monastici*) IV, 281; *Flores Historiarum* (the so-called *Matth. Westmonasteriensis; Rer. Brit. Scr.* No. 95) III, 52 in the Merton MSS.; mandate of the rural dean of Brading (Brathing) to the clergy of his deanery, March, 1280: upon the authority of the official of Canterbury, if the archbishop of York passed through their parish bearing his cross erect, then all such places in the

archbishops of York had also taken the title of *primas*.[23] On the 20th of April, 1352 or 1353,[24] the then archbishops, Islip of Canterbury and Thoresby of York, with the king's mediation concluded an agreement, for themselves and their successors, as to the bearing of the cross in each other's province and as to precedence. The

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archdeaconry of Middlesex were to be placed under ecclesiastic interdict; no one was to sell to him, or communicate with him in any way, or beg his blessing or ring the bells to greet him (*Rer. Brit. Scr.* No. 61, p. 59); report of Wickwane to the pope, 1st April, 1280 (*Rer. Brit. Scr.* No. 61, p. 60). Similar orders of the archbishop of Canterbury, 24th Dec. 1284, to the archdeacon of Canterbury (*Rer. Brit. Scr.* No. 77; III, 869), 12th April, 1285, to the official of the bishop of Chichester (*Rer. Brit. Scr.* III, 893), 12th June, 1285, to the archdeacon of Canterbury and the commissary for the exempt deaneries, also to the commissary of Canterbury (*Rer. Brit. Scr.* No. 77, III, 906, 908); similar mandates of 26th March, 6th and 11th April, 1286 (*Rer. Brit. Scr.* No. 61, pp. 82, 83), of 7th May, 1287, to the bishop of Worcester (*Rer. Brit. Scr.* No. 77, III, 945), of 8th March, 1288, to the archdeacons and other ecclesiastical officials of Canterbury, London and Rochester (*Rer. Brit. Scr.* No. 77, III, 955).

Letter of the archbishop of Canterbury, of the same purport as the above, 25th Jan. 1301, to the bishop of Lincoln, respecting the forthcoming appearance of the archbishop of York at the parliament of Lincoln (Wilkins II, 264); letter of similar purport of the archbishop of Canterbury (1306) to his commissary (Wilkins II, 284). Compare also letters of Edward I, 31st Dec. 1304, to the pope and the cardinals in favour of the claim of York (Rymer, *Foedera* 4th Ed. I, 969).

In 1312 the pope (without settling the dispute in principle) allowed the archbishop of York, returning from the council of Vienne, to have his cross carried before him on his way back through the province of Canterbury. Baronius, *Annal.* 1312, No. 26, Ed. 1864–83, XXIII, 542.

In the year 1314 king's order to archbishop of York not to cause difficulties to the archbishop of Canterbury on his way to the parliament of York for erecting his cross (Wilkins, *Conc.* II, 448).

In 1317 archbishop Melton of York, returning from Rome, proceeded with cross erected through Kent and London. The archbishop of Canterbury laid the town of London under an interdict for the time of the archbishop of York's stay (*Annal. Paulini; Rer. Brit. Scr.* No. 77; I, 281).

In 1325 the archbishop of Canterbury excommunicated the archbishop of York for having caused his cross to be borne before him in the southern province. (Report in Wilkins, *Conc.* II, 526, after Wharton, *Anglia Sacra* I, 365.)

Prohibition of Edward III to the archbishop of Canterbury, 18th Aug. 1332, against causing difficulties to the archbishop of York on his way to parliament for erecting the cross, reference being made in the prohibition to an agreement made between the archbishops in the reign of Edward II to the effect, *quod praefatus praedecessor vester, et successores sui, ad parliamenta et tractatus dicti patris nostri, et haeredum suorum, quae infra dictam Eborum provinciam teneri contingeret, et praefatus Eborum archiepiscopus, et ipsius successores, ad hujusmodi parliamenta et tractatus, infra dictam Cantuariensem provinciam tenenda . . . venientes, cruces suas ante se erectas portarent, absque perturbatione inibi facienda* (Rymer, *Foedera* 4th Ed. II, 844).

[23] Compare *e.g.* council of *Ripon*, 1306 (above, note 14), letters of archbishop Grenefeld of York, 1315; see also in letter of archbishop of Canterbury to archbishop Melton of York, 1324 (*Rer. Brit. Scr.* No. 61, pp. 238, 246, 326). The bishop of Durham in 1199 claimed for the archbishop of York as *totius Angliae primas* the right of assisting at the king's coronation (Hoveden, *Rer. Brit. Scr.* No. 51; IV, 90).

[24] On the date compare Raine, *Fasti Eboracenses, Lives of the Archbishops of York*, London, 1863, I, 457, note *s.*

compact was ratified by the pope in 1354. By it, with certain restrictions, the bearing of the cross was allowed to each in both provinces, and precedence in point of honour was conceded to the archbishop of Canterbury.[25] In spite of this arrangement difficulties again arose in 1514–5, when Wolsey, archbishop of York but not yet cardinal, caused his cross to be borne before him in presence of the cross of Canterbury.[26]

The effect of the settlement reached as to official position and relative rank was to place both archbishops in dependence on the pope. The conferment of the legation on the archbishops did not protect them from the intrusion of a special legate, during whose stay their own legatine rights were suspended.[27] Moreover, the pope could at any time alter the official position of the archbishops to one another by a withdrawal [28] or special extension [29] of the legatine powers, or their relative ranks by bestowing on one the title of cardinal.[30] Use was frequently made of all these openings.

As a consequence of the reformation the appointment of ecclesiastics of the church of England to the legation ceased.[31] This put

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[25] The agreement and the bull of confirmation are printed in Wilkins, *Conc.* III, 31 after *reg. Islip.* In the former both archbishops entitle themselves papal legates; moreover, the archbishop of Canterbury designates himself *totius Angliae primas*, the archbishop of York *Angliae primas.* Each archbishop allows the other to have the cross borne before him in his neighbour's province; in return for the privilege accorded him every consecrated archbishop of York, within two months after setting foot in the province of Canterbury, must make a gift worth forty pounds to the shrine of Becket; if the cross-bearers of Canterbury and York come together, in wide streets they are to walk side by side, in narrow ones the cross-bearer of Canterbury is to precede. *In parliamentis autem, tractatibus, et consiliis regis, quando Cant. et Ebor. archiepiscopi simul praesentes fuerint, quicunque Cant. archiepiscopus, quia ecclesia Cant. antiquior, et praeeminentior fore dignoscitur, ad domini regis dextram assidebit, et praefatus Ebor. archiepiscopus existens pro tempore ad sinistram . . . In conciliis vero, convocationibus, seu locis aliis quibuscunque, in quibus Cant. et Ebor. archiepiscopos convenire continget, dominus Cant. archiepiscopus pro tempore existens, primum locum seu sedem eminentiorem; Ebor. vero alium locum secundum eminentiorem obtinere debebunt.*

[26] Cavendish (contemporary with Wolsey), *Life of Wolsey*, in Wordsworth, *Ecclesiastical Biography* 4th Ed. London, 1853, I, 481.

[27] Decretals of Gregory IX (*Lib. Extra*) I, tit. 30 c 8.

[28] Pope Martin V, angry because archbishop Chichele had not in accordance with papal desire obtained the abolition of the acts against provisions, withdrew from him (1427) legatine powers and appointed bishop Beaufort of Winchester legate. (Bull of Martin V to Chichele in Wilkins, *Conc.* III, 484: . . . *te a legatione dictae sedis . . . duximus suspendendum.* The papal bulls were seized on reaching England, and thus not published. Cf. § 25, note 8 and § 34, note 13.)—On the withdrawal of the legation from archbishop Pole see § 6, note 51 and § 34, note 13.

[29] So especially in the case of Wolsey, archbishop of York.

[30] The precedence of all cardinals before other prelates was, from the council of Lyon, 1245, fixed; the cardinal *bishops* sometimes took precedence of the other bishops even in the eleventh century. Hinschius, *Kirchenrecht* I, 328.—Compare also the bull of Gregory IV, 27th March, 1371 (Wilkins, *Conc.* III, 90), forbidding archbishops to have their crosses borne before them in the presence of a papal legate of a cardinal.

[31] Archbishop Cranmer renounced the further use of the legatine title. Ex-

an end to all possibility of changing from time to time the relative positions of the two prelates. As in the two centuries immediately before the reformation the legatine office had customarily been conferred on both archbishops, it had become the rule that both had equal rights of jurisdiction; nothing beyond honorary precedence had been left to the archbishop of Canterbury. Such were the relations after the reformation and such they are at the present time.[32] The archbishop of Canterbury has in respect of jurisdiction only the more prominent position in so far as by 25 *Hen. VIII* (1533/4) c 21 ss 2 ff. the right is given him, in certain cases especially those in which at an earlier time the pope used to exercise dispensing powers, of granting dispensations, licences, faculties, etc. for both provinces. Further, it is claimed, that he has by long custom come to have the privilege of crowning the kings of England.[33] But by an act of 1689 the archbishop of York or any other bishop of the realm may be appointed by the sovereign to administer the coronation oath.[34]

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tract from proceedings of southern convocation, November, 1534 (Wilkins, *Concilia* III, 769): *Archiepiscopus . . . voluit et mandavit, quod in omnibus et singulis procuratoriis exhibitis coram eo in hac convocatione . . . et in posterum in eadem convocatione exhibendis inseratur hoc verbum 'metropolitanus' et deleatur ab iisdem 'apostolicae sedis legatus.'*

[32] In the state the archbishop of Canterbury takes precedence of all noblemen not of royal blood and of all secular officials, the archbishop of York of all dukes except those of royal blood and of all secular officials except the lord chancellor.—The order in which the officers of the church are to sit in parliament is fixed by 31 *Hen. VIII* (1539) c 10 *An Acte for the placing of the Lordes of the Parliament*, and is as follows: the king's vicegerent Thomas Crumwell and all who shall succeed to this office, the archbishop of Canterbury, the archbishop of York, the bishops of London, Durham, Winchester; *and then all the other Bisshoppes of both provinces of Canterburie and Yorke shall sytt and be placed on the same side after their auncyentes as it hath bene accustomed.*

[33] Phillimore, *Eccl. Law* 37.—Coronations of English kings have, for various reasons, often been performed by other prelates than the archbishop of Canterbury.—Compare from Henry II's time letter of Alexander III to Roger, archbishop of York, 13th July, 1162 (printed in *Materials for the History of Becket*, *Rer. Brit. Scr.* No. 67, V, 21) in which the pope ratifies to the archbishop of York and his successors the right (not the *exclusive* right) to crown the king. By letter of 5th April, 1166 (*Materials*, *l c.* V, 323) Alexander subsequently forbade the archbishops of York and the rest of the bishops of England to perform a coronation without the consent of the archbishop of Canterbury. Afterwards Alexander III seems to have again recognized the archbishop of York's right to crown: *quoniam . . . hoc ad officium tuum pertinet.* (Letter of Alexander III to archbishop of York in *Materials*, *l.c.* VI, 206. Genuineness and date of letter disputed.) By letter of 4th Nov. 1176 (this is the date in Hardy, *Syllabus to Rymer;* Jaffé, No. 13250, assigns it to 1175–79; printed in Rymer, *Foedera* 4th Ed. I, 26, under the year 1170) Alexander III confirmed to archbishop Richard of Canterbury the right of crowning the king in the *southern* province.

[34] 1 *Gul. & Mar.* sess. 1 c 6 *An Act for Establishing the Coronation Oath*, ss 2, 4.

§ 35.

C. RIGHTS AND DUTIES OF THE ARCHBISHOPS.[a]

Every archbishop is at the same time bishop of a special diocese, and in so far is like every other bishop in his district.

As archbishop he has a general right of supervision within his province. This right was sometimes in the middle ages and more frequently during the sixteenth and seventeenth centuries exercised by means of visitations. In later times it is not known that metropolitical visitations have taken place.

The archbishop has the right of confirming those elected to bishoprics; he may by royal mandate in single cases receive the right of confirming the election of the other archbishop. But in either instance the confirmation cannot be withheld without incurring the penalties of praemunire.[1]

In most dioceses, *sede vacante* or when the bishop is permanently hindered, the archbishop in person or by some authorized representative acts as guardian of the spiritualities.[2]

The archbishop has the right of inflicting ecclesiastical punishments—including even suspension and deprivation—upon the bishops placed under him. It is, however, usual that in proceedings for that purpose he should call in the aid of several other bishops. Under given circumstances (*e.g.* should the bishop offend against certain rules for the ordination and admission of priests and deacons) the calling in of a bishop is expressly prescribed by the canons of 1604.[3]

The archbishops appoint, subject to royal confirmation, the judge of the united provincial court.[4] Moreover, each archbishop appoints independently the other officials requisite for his central administration.

The archbishop has the right of summoning the convocation of his province, and presides over the assembly; attached to the presidency are extensive powers as to the conduct of the deliberations. But the summoning of convocation can only take place in virtue of a royal writ.[5]

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[1] 25 *Hen. VIII* (1533/4) c 20, in appendix X.

[2] Compare § 41, near note 10.

[3] Canons 33 and 35 of 1604 (appendix XII). For judgments and opinions in favour of the archbishop's right to deprive see Phillimore, *Eccles. Law* 84–93. Modern instances of deprivation by archbishops: bishop Watson of St. David's, 1695; bishop of Clogher (Ireland), 1822; bishop Colenso of Natal, 1867. On the proceedings in the last mentioned case see Perry, *Hist. of Engl. Ch.* III, 376 ff. c 21 §§ 7 ff.

[4] Cf. § 63.—Until 1874 each archbishop appointed independently a judge for the archiepiscopal court of his province.

[5] Compare §§ 55, 56.

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[a] Phillimore, *Ecclesiastical Law* 21 ff.

§ 36.

D. RIGHTS AND DUTIES OF THE BISHOPS.[a]

The bishop has a general right of superintendence over the ecclesiastical affairs of his diocese. One of the methods by which he exercises it is by means of visitations. These visitations consisted originally in journeys in person through the several parishes, and were ordered to take place yearly. At a later time this kind of visitation passed, in England as generally in the church of the middle ages, as a rule, to the archdeacons. But the periodical summoning of the clergy and laity of several or of all the parishes in a bishop's district to give him an account of the condition of their parishes remained a fixed institution. These visitation-assemblies, as we may term them, were nearly related to diocesan synods. At the time of the reformation, visitation of the diocese by the bishop every three years had become customary.[1] A triennial visitation is still in vogue.[2]

The bishop provides for there being a sufficient number of clergy by ordaining deacons and priests.

The various livings are filled by the bishop independently, if they are in his own gift. This is what is strictly termed 'collation.' If there is a patron other than the bishop, then the patron 'presents,' the bishop 'institutes' and makes a mandate to 'induct' the clerk. In the appointing of perpetual curates, curates in chapels of ease, lecturers, lay readers of the modern kind and assistant curates, the proper person nominates the clerk to the bishop, the latter gives his approbation by conferring his licence to officiate. In like manner, other persons require the licence of the bishop to preach or catechize in his diocese.[3] Of the officers of cathedral and collegiate churches the bishop fills independently honorary canonries where such exist. The residentiary and non-residentiary canonries are, if in the patronage of the bishop, filled by collation, if in the gift of some other patron, by presentation and institution; in both cases installation follows; a few prebends are donative. Deans are now all appointed

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[1] Compare § 57.

[2] 4 & 5 *Vict.* (1841) c 39 s 28 enacted: . . . *that any bishop or archdeacon may hold visitations of the clergy within the limits of his diocese or archdeaconry, and at such visitations may admit churchwardens, receive presentments, and do all other acts, matters, and things by custom appertaining to the visitations of bishops and archdeacons in the places assigned to their respective jurisdiction and authority under or by virtue of the provisions of the said first or secondly recited act* (6 & 7 *Gul. IV* c 77; 3 & 4 *Vict.* c 113)*; and any bishop may consecrate any new church or chapel or any new burial ground within his diocese.* The provision has been repealed as obsolete by 37 & 38 *Vict.* (1874) c 96.

[3] Canon 36 of $\frac{1604}{1866}$ (appendix XII). For further details see under the several offices.

[a] Phillimore, *Eccles. Law* 21 ff.

by the sovereign.[4] In rare instances canonries and lower offices are donative, that is preferment to them is by some third person (frequently the king) without any presentation to the bishop. Archdeacons were commonly appointed independently by the bishop; but preferment could be in the gift of a layman.[4a] 6 & 7 *Gul. IV* (1836) c 77, in reciting the various recommendations for the carrying out of which commissioners are appointed, gives this: 'that all the archdeaconries of England and Wales be in the gift of the bishops of the respective dioceses in which they are situate.'[5] Rural deans are, as a rule, appointed by the bishops independently; but in some instances there are other methods of appointment.[6]

In those of the above cases in which some third person has a right to appoint and in which the bishop must co-operate with this third person in filling the office, the bishop may not refuse institution or licence arbitrarily; but must have definite reasons, such as misconduct of the clerk, insufficient knowledge or the utterance of opinions not consonant with the doctrine of the church. The grounds of refusal are not only subject, in their full extent, to review by higher ecclesiastical courts (provincial court and judicial committee of the privy council), but are also subject, to a great extent, to examination by the superior temporal courts.[7]

Besides his share in filling up the regular offices in his diocese, the bishop has to provide for the maintenance of divine service during the temporary or long-continued absence of the incumbent, or when the latter is otherwise prevented from holding it, or during vacancy. But even in cases of this latter kind, the nomination of a representative is left, as far as is feasible, to the regular occupant of the office, if available and capable of pronouncing an opinion; the bishop's action is confined to the granting of a licence to officiate.[8]

It is a disputable point how far, in respect of the diocesan (or consistory) courts, that process of development has been continued, whereby the archiepiscopal courts have become independent judicial bodies, pronouncing their decisions in the name of the archbishop who, however, does not personally take part in framing those decisions.

The preponderating opinion is that, as a rule, the consistory courts have also become independent judicial bodies, which, the bishop himself excluded, are competent in all cases of contentious jurisdiction; in various bishoprics, however, in the patent given to the official a different provision is made.[9] The judge (chancellor) is

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[4] Cf. § 37, notes 23, 24, 32.

[4a] Cf. Phillimore, *Eccles. Law* p. 240.

[5] Cf. § 42, notes 16, 20.

[6] Cf. § 43, near note 25.

[7] How far the temporal courts may review episcopal decisions is in some respects disputed. The legal forms have been developed in connexion with medieval struggles as to the competence of the temporal courts in suits of advowson. Cf. § 60, near notes 152 ff.

[8] Compare § 45.

[9] On this question see Phillimore, *Eccl. Law* 84, 1210, 1212 *c*; cf., however, Gibson, *Codex*, Introduction 22.

The development of clear principles has been hindered by the fact that the bishop's chancellor unites in his own person the offices of the independent

an officer appointed by the bishop. In 3 & 4 *Vict.* (1840) c 86 'An Act for better enforcing Church Discipline,' and 37 & 38 *Vict.* (1874) c 85 'The Public Worship Regulation Act,' for the forms of procedure there allowed the personal decision of the bishop (partly alone, partly with assessors) is in the main required, and only in certain cases is the appointment of a commissary allowed. Subject to this restriction, the old consistory or bishop's court continues with such competence as it before possessed. The 'Clergy Discipline Act,' 55 & 56 *Vict.* (1892) c 32 prescribes (partly in amendment of 3 & 4 *Vict.* c 86) that, in all proceedings before the ecclesiastical court against clerks for immorality, the chancellor (alone or calling in assessors) has to give judgment.

The bishop has the right of summoning the diocesan synod of his diocese, and he presides therein. The calling together of the diocesan synods had fallen into disuse after the reformation period; but in some cases they have been summoned in modern times.[10]

A bishop is generally[11] a member of the house of lords, always a member of the provincial convocation, as also a member of the national synod, should it again be summoned.

Bishops are, as a rule, to be present in person at the place where their cathedral churches are situated, at least at the times of high

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official and of the dependent vicar-general. In 11 *Gul. III* it was decided that both archbishops and bishops might sit personally on the bench instead of their judges. Judgment of the Court of King's Bench, *Pasch.* 11 *Gul. III* in the case of *Bishop of St. David's v. Lucy* (motion for a prohibition granted in proceedings before the archbishop of Canterbury *personally*, to deprive the bishop of St. David's): *The archbishop hath a provincial power over all the bishops of his province, and may hold his court where he pleases; and he may convene before himself, and sit judge himself; and so may any other bishop; for the power of a chancellor or vicar general is only delegated in case of the bishop.* (Salkeld, *Reports of Cases adjudged in the Court of King's Bench.* 6th Ed. London, 1795, I, 134.)

In the Court of Audience (see § 63) the archbishops could, at all events, sit themselves in judgment. According to Phillimore 448 it is admissible in a *jus patronatus* (a suit to determine to whom the right of patronage of a church belongs) for the bishop to sit in person as judge. Cf. Stubbs, *Hist. App.* I, p. 46, No. 3 to *Report of Ecclesiastical Courts Commission*, 1883, and the report itself, II, 698, note. According to the statements there made, even at the present day, in fifteen bishoprics the right is reserved to the bishop to pronounce judgment in person upon certain cases or, generally, to exercise in person the powers entrusted to the official. This reservation is made in the letters patent granted to the official. It is probably occasioned by the rule in the canons of 1640 (validity doubtful; cf. § 7, note 32) c 11: . . . *that hereafter no bishop shall grant any patent to any chancellor, commissary, or official, for any longer term than the life of the grantee only, nor otherwise than with express reservation to himself and his successors, of the power to execute the said place, either alone, or with the chancellor, if the bishop shall please to do the same,* . . . Appeals from the court of the dean of Guernsey and Jersey (a sort of rural dean; cf. Dansey, *Horae Decanicae* I, 195, note 1) are to the ecclesiastical superior, the bishop of Winchester, *personally*; if his see is vacant, to the archbishop of Canterbury, *personally*. Phillimore 1202 *s*.

24 *Hen. VIII* c 12 s 3 enacted that if a suit was begun before the archdeacon or commissary of an archbishop, appeal lay to the Court of Arches or of Audience of the same province and from it to the archbishop.

[10] Cf. § 57. [11] Cf. § 21, near notes 50 ff.

festivals, and to hold there divine service on the chief holy days.[12] To their official duties belong also confirming, ordaining, and consecrating churches and burial grounds.

§ 37.

4. CHAPTERS.[a]

From the very outset of the conversion there gathered at episcopal seats societies of ecclesiastics who lived together in community with their bishop. These societies assumed in some places a monastic form;[1] at others monks and secular clergy consorted without any strict division between them.

With the middle of the eighth century monks and secular clergy began to be more sharply distinguished.[2] About the same time a decay of the monastic system set in. Numerous monasteries were destroyed in the course of the wars with the Northmen during the ninth century. When they were refounded, secular clergy frequently stepped into the places of the former monks. Thus in the beginning of the tenth century, at all or almost all episcopal seats there were associations of secular clergy.

On the continent the endeavour had made itself felt, also from the middle of the eighth century, to give the clergy at the episcopal seat a constitution resembling monastic forms. The model for such constitutions was, on the continent, the rule established by archbishop Chrodegang of Metz about the year 760. He prescribed that the canons should live together; but allowed them to retain their private property.[3] In England, so far as is known, neither this nor any similar rule found, in the first instance, admission.

In the tenth century the monasteries, in consequence of internal reforms, entered on a new career of progress. In connexion therewith attempts were made in England to compel the clergy at the episcopal seats to live more regular lives. But in the majority of cases such attempts took the line of enforcing, not (as in the century before on the continent) a rule for secular canons, but, more than

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[12] Council of Oxford, 1222 (Wilkins, *Conc.* I, 585) c 1; const. of Otho, 1237 (*l.c.* I, 649) c 22; const. Othobon, 1268 (*l.c.* II, 1) c 21.

[1] So Gregory prescribed for Canterbury. (In his instruction in answer to Augustine's first question, 601; printed § 44, note 6.) A monastic constitution also arose when the monastery of the place was the older foundation and an episcopal seat established subsequently. Stubbs, *l.c.*

[2] Cf. § 3, note 6.

[3] Cf. Hinschius, *Kirchenrecht* II, 52 ff. The canons who adopted the rule of Chrodegang remained *canonici saeculares*.

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[a] E. W. Benson, *The Relation of the Chapter to the Bishop*. E. A. Freeman, *The Cathedral Churches of the Old Foundation*. Both in *Essays on Cathedrals*, ed. J. S. Howson, London, 1872.—*Reports of the Royal Cathedral Commission in Parliamentary Papers*, 1854, vol. XXV, 1854-5, vol. XV.—Phillimore, *Ecclesiastical Law* 147 ff.—For the Anglo-Saxon period: Stubbs, Introduction to *Epistolae Cantuarienses* (*Rer. Brit. Scr.* No. 38, vol. II).

that, a completely monastic rule. Bishops Aethelwold of Winchester and Oswald of Winchester in particular, supported probably by archbishop Dunstan of Canterbury,[4] whose policy in general favoured the monks, proceeded vigorously against the canons at their episcopal seats, and substituted monks for them.[5] In the bishopric of Sherborn (afterwards Old Sarum, Salisbury) the chapter had also, even before the conquest, been transformed into a monastic one. At the time of the conquest the societies of Canterbury and Durham were of a mixed character.[6] Shortly after the same event,

[4] Cf. Perry, *Hist. of Engl. Church* I, 110, note 3.

[5] On the continent the tendency to do away with private property of canons first became effectual in the middle of the eleventh century. The prohibition against holding private property drew the chief distinction between *canonici regulares* (and the monks, who differed but little from them) and *canonici saeculares*. Hinschius, *Kirchenrecht* II, 57.

[6] According to Stubbs, *l.c.* p. xxiii, at the time of the conquest the canons at York, London, Hereford, Selsey, Wells, Exeter, Rochester, Lichfield, Dorchester, Thetford (from 1078 substituted for Elmham) were secular; whilst Winchester, Worcester and Sherborne were monastic. On the circumstances of Canterbury and Durham see Stubbs as quoted.

According to Stubbs, Introduction to the chronicle *De Inventione Sanctae Crucis* etc. p. vi, it is doubtful whether even at the cathedrals, which were designated monastic, secular canons were, before the conquest, completely excluded.

A definite conclusion is rendered more difficult owing to the fact that in these earlier times the terms afterwards used exclusively to denote an office in the monastic convent are often interchanged with those which afterwards imply only an office in a secular chapter.

The earliest mention of canons in England, in the sense of priests living in common without monastic vows, is found in council of Celchyth, 787 c 4 (printed in § 3, note 6). Haddan and Stubbs, *Counc.* III, 461, note *i.*—'Canons' are also mentioned in the laws of Aethelred V, 7 (ordin. of 1008), VI, 2, 4 ('council of *Eusham*,' 1006–11, perhaps only another version of the ordin. of 1008) and Knut (1016–35) I, 6 pr.—In earlier times the secular clergy of the cathedral churches were generally called *clerici*.

The heads of the secular chapters are called in the older period sometimes 'provost (*praepositus*),' sometimes 'prior,' in some cases probably 'abbot.' Stubbs, *Memorials of Dunstan* (*Rer. Brit. Scr.* No. 63) p. xvi. On secular abbots see Stubbs, Introduction to *De Inventione* etc. p. v, note 4. York had an abbot in the ninth century. According to Stubbs, *l.c.* the first known mention of 'prior' in England dates from the year 821. According to Haddan and Stubbs, *Counc.* III, 601, the title 'prior' occurs for the first time in a contemporary English document in the report of the council of Clovesho, 825. From earlier times we find adduced in Dugdale's *Monasticon* Ed. 1817 ff. I, 267, seven alleged priors of Westminster (616–785), and III, 306 an alleged prior of Tinmouth. (Beginning of eighth century, Beda, *Hist. Eccles.* Book V c 6: . . . *monasterio* . . . *abbatis jure praeest.*)—On the mention of the archdeacon and of the provost at the head of secular chapters see § 42, note 1.

The office of the 'dean' as superintendent of the secular chapter is first mentioned in England in the eleventh century. Deans as monastic officers are found somewhat earlier. For the earliest mentions see Stubbs, *Memorials of Dunstan* (*Rer. Brit. Scr.* No. 63) p. xv, notes 2, 3; add also the mentions in Liebermann, *Anglonormannische Geschichtsquellen* pp. 3, 64, and Crispinus, *Vita Herluini* (Migne, *Patrologiae Cursus* vol. 150, p. 707 A). Cf. also Haddan and Stubbs, *Counc.* III, 611, note *a*, where it is held that the statement of Gervasius that Ceolnoth before his consecration as archbishop of Canterbury (*circ.* 832) was dean of the church of Canterbury, possibly rests on a confusion of Ceolnoth with Aethelnoth (archbishop of Canterbury 1020–38). According to

endeavours to introduce monks into the chapters received fresh impulse through Lanfranc's reformation of his cathedral. In the course of the eleventh and twelfth centuries, amid constant struggles, monks took the place of canons at a considerable number of episcopal seats besides those where monachism had already been established; but in some places the system was not maintained. The rule of Chrodegang, and similar rules for secular canons, were during the eleventh century introduced at some few cathedral centres; but held their ground there only for a short time.[7] Even without any connexion with episcopal seats there were colleges of secular canons at several places.[7a] Chapters of regular canons did not exist in England until the opening of the twelfth century. From that time bodies of regular canons began to be founded here, as abroad; of the chapters at episcopal seats only a single one received such a constitution.[8]

Towards the end of the twelfth century the process of development, in so far as episcopal seats were concerned, had come to a standstill: about half the episcopal chapters of England were monastic; about half consisted of secular canons; one was composed of regular canons. This distribution lasted until the reformation.[9]

The form of constitution by which there was at the episcopal seat a monastic convent, whose members exercised all the rights of secular chapters (*ecclesia conventualis*[10]), was in the later middle ages confined almost exclusively to England and occurred extremely

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Stubbs, *Const. Hist.* I, 254, note 5 c 8 § 87, the deans of this earlier time were perhaps the executors of the spiritual authority of exempt monasteries, just as the archdeacons executed the sentence of the bishops. The monastic convents of Worcester and Evesham and the outwardly monastic convent of Canterbury had 'deans' until the conquest. Stubbs, Introduction to *De Inventione* etc. p. v, note 4.

[7] Cf. Stubbs, Introduct. to *Epist. Cant.* p. xvii and Introduct. to *De Inventione* etc. pp. x, xi.

[7a] For a list of canonical foundations and Benedictine foundations in England at the time of the conquest see C. H. Pearson, *Historical Maps* 2nd Ed. London, 1870, p. 69.

[8] According to Stubbs in his edition of Mosheim, *Institutes of Eccles. Hist.*, translated by Murdock and Soames, London, 1863, II, 48, note, the oldest house of regular canons in England was that of St. Julian and St. Botolf, Colchester, founded about 1105; among the oldest were to be reckoned also Holy Trinity, London, built and endowed 1107, Merton, 1117.—The only episcopal seat at which regular canons (Austin) were introduced was Carlisle, founded 1133. They remained until the reformation.

[9] At the beginning of the reformation there were monastic convents at Canterbury, Durham, Ely, Norwich, Rochester, Winchester, Worcester; chapters of secular canons at Chichester, Exeter, Hereford, Lincoln, London, Salisbury, York; a chapter of regular canons at Carlisle. In the two sees formed by combinations, viz. Lichfield and Coventry, and Bath and Wells, chapters of secular canons and monastic convents existed side by side, the former being found at Lichfield and Wells, the latter at Coventry and Bath.

[10] Cf. however, Nicollis, *Praxis Canonica.* Salzburg, 1729, I, 854, after Lambertinus, *de Jure patronatus.* In the legal phraseology of the middle ages *ecclesia conventualis* is frequently used as equivalent to *collegiata*, not in the common, restricted meaning of *Ecclesia Religiosorum Conventualium, id est Fratrum de non observantia.*

seldom in other states.[11] The bishop had as regards the convent the position of an abbot. Under him, at the head of the convent stood a prior.[12]

In almost all secular chapters, from the eleventh and twelfth centuries onward the dean became the head.[13] The office of provost (*praepositus*) survived only in isolated cases, apparently solely in some non-episcopal chapters and colleges (*Kollegien*). The members of the chapter ('canons' or 'prebendaries') resolved themselves by degrees into residentiary and non-residentiary. Some of the canons received special offices in the chapter, and official titles;[14] frequently the duties of the office dwindled to nothing, and only the title remained. The dean was also a member of the chapter.[15] The arrangements were not uniform in the several chapters.

The property of the bishop and of the episcopal chapter or convent originally formed a common stock. Gradually a separation in this respect took place at the various episcopal seats, and the chapter or convent was allowed the independent management of its share of the property;[16] the consent of the bishop, however, continued to be requisite for the more important dealings therewith.

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[11] Stubbs, Introduction to *Epist. Cant. l.c.*, gives the following as an example: When the abbey of Monreale in Sicily was raised to an archiepiscopal see, Lucius III (1181–85) ordered that the monastic constitution should be maintained. Cf. Ordericus Vitalis (Ed. of Le Prevost) II, 201 Book IV c 6: *Augustinus enim et Laurentius, aliique primi praedicatores Anglorum monachi fuerunt, et in episcopiis suis vice canonicorum (quod vix in aliis terris invenitur) monachos pie constituerunt.* Similarly Robert de Torigni (*Rer. Brit. Scr.* No. 82) IV, 168.

[12] On earlier times see above, note 6. [13] On earlier times see above, note 6.

[14] The chief titles which occur are sub-dean, precentor (succentor), chancellor, vicechancellor, treasurer, provost, warden.

[15] Thus the expression often used in English acts of parliament, 'dean *and* chapter,' is inaccurate.

[16] According to Stubbs, Introduct. to *Epist. Cantuar.* in Canterbury, archbishop Lanfranc (1070–89) had either introduced or confirmed the separation; in *Domesday* the two properties are put separately; archbishop Anselm (1093–1109) gave the convent the right of managing its share of the property independently.

Cf. Bracton (*circ.* 1230–57) Book V, tract. 5 c 32 § 8 (*Rer. Brit. Scr.* No. 70; VI, 494): . . . , *cum canonicus adeo libere teneat praebendam suam de ecclesia sicut ipse episcopus baroniam suam, et canonici sunt quasi unum corpus per se in ecclesia; et quamvis episcopus sit caput ecclesiae, tamen canonici habent sua bona a bonis episcopi separata,* . . . Const. Otho, 1237 (Wilkins, *Conc.* I, 649) c 28: . . . *sigillum habeant* . . . *archiepiscopi* . . . *episcopi* . . . *abbates, priores* . . . *necnon ecclesiarum cathedralium capitula, et caetera quoque collegia, et conventus simul cum suis rectoribus, aut divisim, juxta eorum consuetudinem vel statutum.* 35 *Ed. I* (1306/7), *Statutum Carlioli* c 4: The monastic seal had hitherto been, in case of the cistercians, praemonstratensians and other monks, in the custody of the abbot, not of the convent . . . *decetero habeant sigillum commune, et illud in custodia Prioris Monasterii sive domus et quatuor de dignioribus et discrecioribus ejusdem loci Conventus, sub privato sigillo Abbatis ipsius loci custodiendum deponant; ita quod Abbas, seu Superior domus cui praeest, per se contractum aliquem, seu obligacionem nullatenus possit firmare, sicut hactenus facere consuevit* . . .

According to Richter, *Kirchenrecht* § 311, the separation of property had been effected on the continent in many cases as early as the tenth century.

The chapter was at the bishop's side to counsel him; for certain weighty acts of administration he needed the chapter's approval. This was, in particular, the case when he made dispositions of the property of the see which were to be binding on his successor.[17] During vacancy of the see, to the convent or chapter belonged the care of the spiritualities. Yet this right was lost in almost all English bishopries, and passed into the hands of the archbishop.[18] The chapter and the convent had a right of assisting in the election of the new bishop. This right was frequently exercised even in the Anglo-Saxon period; in the twelfth and thirteenth centuries it obtained more decided recognition from the sovereign; but was subsequently much curtailed by the interference of kings and popes, until with the reformation the co-operation of the chapter in such election became merely nominal.

The reformation brought about a change in the constitution of what had hitherto been conventual churches. Upon the dissolution of the monasteries (beginning in 1536) the convents at the episcopal seats were also abolished. By 31 *Hen. VIII* (1539) c 9 the king was empowered to found new bishopries and cathedrals and to endow them from the confiscated property of the monasteries.[19] Accordingly Henry created six new sees [20] with secular chapters, as well as a number of secular collegiate churches, and in the eight bishopries, which had until then had convents of monks or regular canons, he substituted secular chapters.[21] In the united sees of

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[17] The regulations of canon law here pertinent are collected in Richter, *Kirchenrecht* § 135, notes 7, 8. Cf. also Phillimore, *Eccles. Law* 1195. Bracton (*Rer. Brit. Scr.* No. 70) I, 94: *Item sunt nonnulli qui dare non possunt sine consensu aliorum, nec valet illorum donatio per se, ut si archiepiscopi donationem facerent, episcopi, abbates vel priores ecclesiarum quae sunt de advocatione domini regis, nec dare possunt sine assensu capituli sui, nec ipsum capitulum sine consensu regis vel alterius patroni, quia omnium illorum consensus, quos res tangit, erit necessarius et requirendus.* V, 42: *Si procurator sicut celerarius vel alius, abbas vel prior sine assensu capituli, vel episcopus, vel capitulum, sine consensu capituli, episcopi vel alius cujus assensus fuerit necessarius, dimiserit sine assensu,* . . . Similarly V, 4, 56; VI, 378, 392.

[18] Cf. § 41, near note 10.

[19] 31 *Hen. VIII* (1539) c 9 *An Acte for the King to make Bisshopps.* It is requisite to found more *Bisshopriches, Collegiat and Cathedrall Churches* in place of the monastic houses. King Henry is accordingly empowered, by royal letters patent or other writing under the great seal from time to time *to declare and nominate* . . . *such nomber of Bisshoppes, such nomber of Citties, Seez for Bisshoppes, Cathedrall Churches and Dioceses* . . . as may seem to him suitable, to endow them according to his pleasure, and, certain forms observed, to make statutes in regard to them.

[20] Cf. § 33, note 35.

[21] All letters patent of Henry VIII, issued after 4th Feb. 27 *Hen. VIII* and touching the foundation or endowment of chapters and colleges, are, despite of any defects of form, confirmed and declared valid by 35 *Eliz.* (1592/3) c 3 s 2. Cf. also Phillimore, *Eccles. Law* 156.

On the question of the validity of the statutes for chapters issued under Henry VIII see Phillimore, *Eccles. Law* 174–194: The statutes were given, without the form prescribed in 31 *Hen. VIII* c 9 being observed, to the several chapters through commissaries appointed by Henry. 1 *Mar.* st. 3 (1554) c 9

Lichfield and Coventry, and in the united sees of Bath and Wells, special acts declared that the convents in Bath and Coventry having been abolished, the chapters at Lichfield and Wells were the sole chapters for the bishoprics in question.[22]

The chapters not affected by these transformations still retained their former constitution and were henceforth grouped as 'chapters of old foundation,' and so contrasted with the 'chapters of new foundation,' that is, those established in or after Henry's time either in place of episcopal convents or as entirely new creations.

The essential difference between chapters of new foundation and those of old was that in the former the only offices created were for canons residentiary. Furthermore, the several charters of foundation for the new chapters laid down that the appointment of the dean should rest with the king;[23] in those of old foundation the

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An Acte touching Ordinances and Rules in Cathedrall Churches and Scooles mentions that these statutes are null owing to defect in form, and extends the power to issue new statutes and amend earlier ones to queen Mary for her lifetime. She apparently only availed herself of this power in respect to Durham, confirming the statutes of Henry's commissaries but abolishing the supremacy oath prescribed therein. 31 *Hen. VIII* c 9 was afterwards entirely repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 4. Elizabeth by 1 *Eliz.* (1558/9) c 22 *An Acte whereby the Queenes Highness maye make Ordinaunces and Rules in Churches Collegiate Corporaciouns and Scooles* received for her lifetime powers analogous to those of her predecessor. In spite of various essays to get rid of the uncertainties of the position, Elizabeth, in the end, made no use of this right. Charles I and Charles II issued statutes on their own authority without any special legislative warrant. In consequence of disputes as to the validity of the statutes of Henry VIII, 6 *Ann.* (1707) c 75 was passed, which gave the queen for her lifetime right of altering and amending those statutes, and laid down that those statutes of Henry VIII which had been observed since the restoration of Charles II, 'whereof the Deans and Prebendaries and other Ministers of the said Churches from the said Time have used to be sworn at their Instalments and Admissions,' should be valid if not contrary to the then constitution of the church and the laws of the land. According to the prevailing opinion, observance since the restoration requires to be proved under this act only in respect of the statute as a whole, not in respect of some single, possibly disputed, provision.

[22] 33 *Hen. VIII* (1541/2) c 30 *A Bill for the confirmacion of thauctorite of the Dean and Chaptre of Lychefield in makyng Leasses and other grauntes:* Hitherto there has been necessary for the united sees of Lichfield and Coventry in the making of leases etc. the assent of the convent of Coventry and of the chapter of Lichfield. The former is now abolished. Assent of the latter only shall be effectual. 34 & 35 *Hen. VIII* (1542/3) c 15 *An Acte touching the Deane and Chaptre of Welles to be oone sole Chapitre of it self:* Hitherto the chapter of Wells and the convent of a monastery in Bath have been the common chapter of the bishopric of Bath and Wells. The convent of Bath having been abolished, the chapter of Wells is to be the sole chapter.

[23] Compare *e.g.* the charters of foundation for Carlisle and Gloucester, printed in Phillimore, *Eccles. Law* 175, 186, for Ely and Chester, printed in the *First Report of the Cathedral Commission*, appendix pp. 59, 73 *l.c.* 1854 vol. XXV: . . . *Salvis nobis, haeredibus et successoribus nostris, titulo, jure, et auctoritate, decanum, prebendarios, et omnes pauperes, ex liberalitate nostra ibidem viventes, de tempore in tempus nominandi, assignandi et praeficiendi,* . . .

According to Gibson, *Codex* 2nd Ed. p. 173, the appointment is made at Canterbury, Winchester, Carlisle, Peterborough, Bristol and probably also in the other chapters of the new foundation by letters patent. The bishop then institutes and gives his mandate for instalment to the chapter.—Whether the

dean was elected by the chapter upon the king's *congé d'eslire*, subject to the royal assent and the confirmation of the bishop.[24]

During the first revolution, by an ordinance of the rump parliament, dated 30th of April, 1649, all chapters and the offices and titles connected therewith were abolished and the property belonging to them confiscated.[25] At the restoration, the old constitution of the chapters was revived, and the conveyances etc. by which their property had in the interim been disposed of were not recognized as valid.[26]

The movement in favour of reform in the nineteenth century (1830–40) brought with it far-reaching changes in regard to the chapters and their estates. The fundamental regulations were set forth in 3 & 4 *Vict.* (1840) c 113;[27] later, supplementary enactments are found on the statute book.

Owing to these legislative measures a large number of residentiary canonries were suspended; in some of the particularly small chapters new canonries were created; the number of canons residentiary in each chapter was fixed at from six to four;[28] some of the canonries retained were attached to archdeaconries, a few others to university professorships or rectories; the refoundation of those suspended,[29] and, at a later date, the transformation of non-residen-

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canonries are to be regarded as donative, or as to be filled by presentation depends in many cases on the validity of the statutes, which in opposition to the charter of foundation, prescribe the latter procedure. Cf. Phillimore, *l.c.* 186, 187.

[24] Gibson, *Codex* 2nd Ed. p. 173.

[25] Ordinance of 30th April, 1649: *For the abolishing of Deans, Deans and Chapters, Canons, Prebends and other Offices and Titles of or belonging to any Cathedral or Collegiate Church or Chappel within England and Wales.* As a loan must be issued and the available securities are insufficient, parliament is compelled to sell the possessions of the 'deans and chapters.' *That from and after the 29th day of March* 1649, *the Name, Title, Dignity, Function and Office of Dean, Subdean, Dean and Chapter, Archdeacon, Prior, Chancellor, Chanter, Subchanter, Treasurer, Subtreasurer, Succenter, Sacrist, Prebend, Canon, Canon Resident, or Canon Non-Resident, Petty-Canon, Vicar Choral, Choristers, Old Vicars and New; and all other Titles and Offices of and belonging to any Cathedral or Collegiate Church or Chappel in England and Wales, Town of Berwick upon Tweed, and Isles of Guernsey and Jersey, shall be, and are by the Authority aforesaid, wholly abolished and taken away.* In future no person is to be appointed to such offices. The estates are to be invested in certain persons as trustees. The ordinance is not applicable to colleges etc. in the universities. Full directions follow for the administration and sale of the property.

[26] 12 *Car. II* (1660) c 11 s 48 (printed in § 7, note 65).

[27] *An Act to carry into effect with certain Modifications, the Fourth Report* (24th June, 1836) *of the Commissioners of Ecclesiastical Duties and Revenues.*

[28] 3 & 4 *Vict.* c 113 ss 2-19: In Canterbury, Durham, Ely, Westminster there are to be 6 residentiary canonries, in Winchester and Exeter 5, in all the other episcopal chapters of England proper (excluding Oxford, to which the act does not apply), as also in the collegiate church of Manchester (the creation of the bishopric was already in contemplation) and in St. George's, Windsor, 4, in St. David's and Llandaff, 2. 6 & 7 *Vict.* c 77 (relating to Wales) fixes the number for St. David's, Landaff, St. Asaph and Bangor at four.—According to 3 & 4 *Vict.* c 113 s 3 every dean shall be in residence for at least eight months in the year, every canon for at least three months.

[29] 3 & 4 *Vict.* c 113 s 20.

tiary into residentiary canonries were under certain conditions allowed, as also was the foundation of entirely new canonries.[30] The patronage in respect of canonries already in existence remained in general untouched; but in isolated cases it was conferred on the king, in others on the bishop.[31] To the king was given the patronage in regard to the deanery of every cathedral and collegiate church upon the old foundation.[32] It was laid down that no person shall be appointed dean, archdeacon or canon until he has been six years complete in priest's orders, except in the case of a canonry annexed to any professorship, headship or other office in any university.[33]

Non-residentiary canons of the chapters of old foundation lost all right to any endowment or emolument before attaching to their office.[34] But they did not on that account cease to be members of the chapter, and remained entitled to exercise all other rights which had previously belonged to them.[35] In connexion with the chapters of new foundation, in which there were no non-residentiary prebends,[36] twenty-four honorary canonries were founded; the title of honorary canon is conferred by the bishop on meritorious clergymen and gives no right to any emolument or to membership of the chapter.[37]

A chapter is restricted in the exercise of its patronage to spiritual persons who have held office in the diocese, or been public tutors in the universities of Oxford or Cambridge.[38] The members of a chapter, as such,[39] are to derive their income from the interest assigned to them in a general estate.[40] The property which attached to the

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[30] 36 & 37 *Vict.* (1873) c 39 *Cathedral Acts Amendment Act.*

[31] 3 & 4 *Vict.* c 113 ss 17, 25, 26, 41.

[32] 3 & 4 *Vict.* c 113 s 24.

[33] 3 & 4 *Vict.* c 113 s 27.

[34] 3 & 4 *Vict.* c 113 s 22.

[35] Phillimore, *Eccles. Law* 222 (in Hereford the close chapter includes only the residentiary, the general chapter all canons), 231, note *q.*—According to Perry, *Hist. of Engl. Ch.* III, 350, note 1 c 19 § 8, as a rule no difference is known in chapters of old foundation between the close and the general chapter.

[36] 4 & 5 *Vict.* c 39 s 2 declares, for the removal of doubts, that honorary canonries are and shall be founded in the cathedral churches of Canterbury, Bristol, Carlisle, Chester, Durham, Ely, Gloucester, Norwich, Oxford, Peterborough, Ripon, Rochester, Winchester and Worcester and in the collegiate church of Manchester; of which Ripon and Manchester were founded by Henry VIII as collegiate churches; Bristol, Chester, Gloucester, Oxford, Peterborough were his five new sees; the other eight the earlier conventual churches.

[37] 3 & 4 *Vict.* c 113 s 23. Cf. also 4 & 5 *Vict.* c 39 s 3, 13 & 14 *Vict.* c 98 s 11. —The cathedral commission of 1854–5 proposed the formation of a wider chapter embracing the honorary canons and the archdeacons. The proposal did not become law. However, for the newly founded bishopric of Truro there is established by 50 *Vict.* st. 2 (1887) c 12 *Truro Bishopric and Chapter Acts Amendment Act* a 'general chapter,' which consists of the dean, the regular and the honorary canons.

[38] For the exact field of choice see 3 & 4 *Vict.* c 113 s 44; in Durham it is wider.

[39] A canonry may, however, be combined with another office.

[40] 3 & 4 *Vict.* c 113 s 28. A small portion of land within the precincts of a cathedral or collegiate church or near a residentiary house may be reserved to such church, or permanently annexed to such residentiary house.

suspended and non-residentiary canonries, as also the separate estates appropriated to particular deaneries or canonries—in all cases exclusive of the rights of presentation and nomination—was, with some exceptions, transferred to the ecclesiastical commissioners,[41] to be subsequently applied to improving parochial cures of souls.[42] The incomes of some particularly largely endowed deaneries and canonries were reduced to augment similar, poorly endowed offices.[43]

In the recently founded sees the chapters have received—apart from temporary provisions—the same constitution as the chapters of new foundation have under the various reforming enactments.[44]

Besides the members of the chapter, there are at the chapter churches a number of the clergy[45] who, in subordinate positions, assist in celebrating divine worship. They are grouped together under the name of 'minor canons'; some of them have often special titles.[46] Their position also has been newly regulated by 3 & 4 *Vict.* c 113, and supplementary acts. Thus there are to be at most six, at least two, minor canons at every chapter church; all are to be appointed by the chapter,[47] but any right enjoyed by a dean of appointing a minor canon is reserved to him.[48] Regulations for fixing the number and emoluments of the minor canons in each cathedral or collegiate church are to be made by orders in council framed in pursuit of the schemes of the ecclesiastical commissioners.[49]

Later acts have left it open for the chapters and the corporations of minor canons to transfer their estates to the ecclesiastical commissioners, so that the income therefrom arising may be otherwise regulated.[50]

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[41] 3 & 4 *Vict.* c 113 ss 49–51.

[42] 3 & 4 *Vict.* c 113 ss 67, 90.

[43] 3 & 4 *Vict.* c 113 s 66: The chapters of Westminster, Durham, London, Manchester shall pay over yearly to the ecclesiastical commissioners such sums as shall leave to the dean of Durham an average income of £3000, to the three other deans £2000, and to the canons £1000. The money so paid over is to be applied to giving to the dean of every cathedral and collegiate church in England an income of £1000, to the deans of St. David's and Llandaff £700 each, to the canons of every cathedral church in England £500 each, to the canons of St. David's and Llandaff £350 each, and to enabling the chapters of Chester and Ripon to provide for the performance of the duties of their churches and the maintenance of the fabrics thereof.

[44] Cf. the acts cited in § 33, note 39. In Truro the bishop occupies the position of the dean, until a dean is appointed.

[45] Cf. 4 & 5 *Vict.* c 39 s 15: *in the construction of the same act* (3 & 4 *Vict.* c 113) *and of this act, the term 'minor canon' shall not be construed to extend to or include any other than a spiritual person.*

[46] Frequently '*minor*' or '*petty*' *canons*, in the narrower sense, are distinguished from *vicars choral*. According to 3 & 4 *Vict.* c 113 s 93 the term *minor canon* used therein is to include every 'Vicar, Vicar Choral, Priest Vicar, Senior Vicar, being a Member of the Choir in any Cathedral or Collegiate Church.'—On the *canonici juniores* in continental chapters see Richter, *Kirchenrecht* § 311.

[47] 3 & 4 *Vict.* c 113 s 45.

[48] 4 & 5 *Vict.* c 39 s 15.

[49] 3 & 4 *Vict.* c 113 s 45.

[50] Cf. § 32, note 14.

5. REPRESENTATIVES AND ASSISTANTS OF THE ARCHBISHOPS AND BISHOPS.

§ 38.

A. ASSISTANTS IN THE EXERCISE OF GOVERNING POWERS.

In the earlier part of the Anglo-Saxon period the bishop commonly had with him a deacon as his subordinate assistant.[1] From the beginning of the ninth century, when the number of the ecclesiastics to be superintended had considerably increased, an archdeacon is sometimes named as the assistant of the bishop in the work of supervision.[2] Towards the end of the Anglo-Saxon period there was, as a rule, one archdeacon appointed in every diocese. Simultaneously, however, the archdeacons began to claim, as their own, rights which they had hitherto only exercised under authority from their respective bishops. In this way the archdeacon gradually ceased to be a dependent assistant of the bishop and became an independent official. This development was favoured by the circumstance that towards the end of the eleventh and in the course of the twelfth century, in many bishoprics several archdeacons were appointed and separate districts assigned to each. The place which the archdeacon had previously filled was now occupied by officers with new names: the vicar-general, to represent or assist the bishop in matters of administration proper; the official, to represent or assist the bishop in his position as judge of the episcopal court and in other affairs wherein special legal knowledge was required.[3] The two offices were not always sharply marked off. Moreover, instances some-

[1] Stubbs, *Const. Hist.* I, 245 c 8 § 85: The deacon 'acted as his (the bishop's) secretary and companion in travel, and occasionally as interpreter.'

[2] Cf. § 42, note 1.

[3] On the powers of these two officials see Decretals of Boniface VIII (*Lib. Sextus*) I, tit. 13 c 2: *Licet in officialem episcopi, per commissionem officii, generaliter sibi factam, causarum cognitio transferatur, potestatem tamen inquirendi, corrigendi aut puniendi aliquorum excessus, seu aliquos a suis beneficiis, officiis vel administrationibus amovendi transferri nolumus in eundem, nisi sibi specialiter haec committantur.* c 3: . . . *officialis aut vicarius generalis episcopi beneficia conferre non possunt, nisi beneficiorum collatio ipsis specialiter sit commissa.*—John of Actona 24 cites the rule laid down in c 2 above, and adds: *Vicarius tamen generalis Episcopi haec omnia facere potest, exceptis Beneficiorum Collationibus.* Cf. also Lyndwood Bk. II tit. 4 p. 105.

The official was originally only an assistant of the bishop appointing him; thus his office ceased upon the death or translation of the bishop. The present custom of appointing the official by patent from the bishop with confirmation by the chapter, whereby appointment is for the lifetime of the official, probably began in the seventeenth century. Stubbs, *Hist. Appendix* to *Report of Eccles. Courts Commission*, 1883, I, p. 26.

[4] A collection of the forms of the letters patent which in the nineteenth century were given to the officials in the several archbishoprics and bishoprics of England, will be found in the *Report of the Ecclesiastical Courts Commission*, 1883, II, 659 ff. *Parliamentary Reports* vol. XXIV.

times occur of the existence of several vicar-generals or several officials in the same diocese at the same time.[4]

In both the archiepiscopal sees of England, so far as is manifest, the offices of vicar-general and of judge of the archiepiscopal court were sometimes separate and sometimes united. The offices of the supreme judges of ecclesiastical courts in Canterbury and York were in 1874 fused; and in this way an independent court, the provincial court, was constituted.[5] The archiepiscopal vicar-general [vicar-general's court] has to manage current ecclesiastical business and to grant marriage licences; as a matter of custom he is also, as well as the judge of the archiepiscopal court, appointed head official of the archbishop within the province (in Canterbury also in respect of the exempt districts); but exercises as head official hardly any rights; lastly, also as a matter of custom, in Canterbury he is commissioned once for all by the archbishop, to conduct the procedure, in form retained, upon the ground of which the archiepiscopal confirmation of bishops' elections is pronounced [Confirmation Court].[6]

In all the non-archiepiscopal sees of England the offices of vicar-general and official have for centuries customarily and with few exceptions been bestowed on the same person, who then is by usage designated the 'bishop's chancellor.'[7]

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[4] Under William III it was the old usage in Llandaff to grant the office of vicar-general to two persons, to hold jointly and severally. Phillimore 1194.

In the bishopric of Sodor and Man until recently two vicar-generals were appointed who jointly or singly disposed of the judicial business in all the ecclesiastical courts of the diocese. Now only one vicar-general is appointed. *Report of Eccl. Courts Commission*, 1883, II, 692.

[5] The documents relating to the appointment of the first judge of this court are printed in the *Report of Eccles. Courts Com.* 1883, II, 663 f. Nos. 7, 8. The archbishops appointed in virtue of the 'Worship Regulation Act and in exercise of any other power enabling us in this behalf.' See the *Report* p. 664, Nos. 10, 11 for the patent (not necessary), which the archbishop of Canterbury gave to the same judge, when the offices of Dean of the Arches and Master of the Faculties were by a former statute abolished and their powers vested in the judge of the provincial court.

[6] The patent of the vicar-general of Canterbury, 1872, and of the vicar-general of York, 1877, are in *Report* II, pp. 666, 667. The office managed by the vicar-general of the archbishop of Canterbury is called 'Vicar-General's Office for Granting Marriage Licences, and Court of Peculiars.' The court of peculiars is the court for districts exempt from episcopal jurisdiction.

[7] Gibson, *Codex*, Introduction p. 22. Phillimore, *Eccles. Law* 1203, 1208.—The term 'chancellor' is also used in some acts of parliament. Some of these are cited in Phillimore, *l.c.* 1207, note 1.—Different from the bishop's chancellor is the cathedral chancellor, the latter being the designation of one of the canons in chapters of the old foundation. (Cf. § 37, note 14.)

§ 39.

B. ASSISTANTS IN THE EXERCISE OF POWER TO CONFIRM, ORDAIN AND CONSECRATE.[a]

Certain rights of confirming, ordaining and consecrating being reserved for those in bishop's orders, the diocesan bishop could not be adequately represented, when prevented from discharging his duties, by those in lower orders; representation by those of episcopal rank was then necessary. The difficulty was met in various ways at different times.

In France in the eighth and towards the middle of the ninth century the purpose was served by what were called *chorepiscopi.*[1] But, so far as is known, such bishops were not found in England proper, or were, at most, of exceptional occurrence.[2]

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[1] Against these *chorepiscopi* there are resolutions of the eastern councils dating from as early as the fourth century. The institution became extinct in France about the middle of the ninth century, in Germany in the tenth. Richter, *Kirchenrecht* § 139.

[2] On the *chorepiscopi* in the church of St. Martin at Canterbury to the time of Lanfranc (1070–89) cf.:—

Gervasius, *Actus Pontificum* (*Rer. Brit. Scr.* No. 73) II, 361: *Habebat etiam quondam Cantuariensis archiepiscopus corepiscopum quendam qui in ecclesia Sancti Martini extra Cantuariam manebat; qui adveniente Lanfranco deletus est, sicut ubique terrarum factum esse audivimus.*

Fragmentum de Institutione Archidiaconatus Cantuariensis (printed in Wharton, *Anglia Sacra* I, 150; written apparently shortly after the death of archbishop Peckham, 1292):—

A tempore B. Augustini primi Archiepiscopi Cantuariensis usque ad tempus bonae memoriae Lanfranci Archiepiscopi per 462 *annos nullus fuit Archidiaconus in civitate vel Dioecesi Cantuariensi.* (This not correct. Cf. § 42, note 1.) *Sed a tempore B. Theodori Archiepiscopi* (668–90) *qui sextus erat a B. Augustino, usque ad tempus praedicti Lanfranci fuit in Ecclesia S. Martini suburbio Cantuariae quidam Episcopus auctoritate Vitaliani Papae* (657–72) *a S. Theodoro ordinatus: Qui in tota civitate et Dioecesi Cantuariensi vices Archiepiscopi gerebat in Ordinibus celebrandis, Ecclesiis consecrandis et pueris confirmandis et aliis officiis Pontificalibus exequendis ipso absente. Idem etiam Episcopus omnimodam jurisdictionem in civitate et Dioecesi Cantuariensi sede plena auctoritate Archiepiscopi ipso absente, et Sede vacante in tota Provincia auctoritate Capituli exercebat per* 399 *annos usque ad tempus praedicti Lanfranci.*

Postmodum tempore praedicti Lanfranci Archiepiscopi praedictus Episcopus in fata decessit. Sed idem Archiepiscopus alium substituere non decrevit. . . .

The names of two only of the bishops of St. Martin have been preserved, Eadsige (from 1038 archbishop of Canterbury) and Godwin (d. 1061). Stubbs, *Registrum* 142.

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[a] *Bibliotheca Topographica Britannica*, printed by and for J. Nichols, vol. VI, London, 1790, contains essays printed in 1785 upon suffragan bishops in England, viz. 1. Brett, *Letter on Suffragan Bishops;* 2, Lewis, *An Essay concerning Suffragan Bishops in England*, 1738; 3, Pegge, *Letter on Bishops in Partibus Infidelium*, 1784; 4, Reprint of a list left behind in MS. by Henry Wharton (died 1695) of English suffragan bishops.—Stubbs, appendix V to *Registrum Sacrum Anglicanum*, Oxford, 1858.

From the thirteenth century [3] there appear in England, as simultaneously on the continent, assistants of episcopal rank, variously designated (*episcopi suffraganei, episcopi in partibus infidelium*); in the following centuries the number of them increased.

As the reformation was being carried out, it became requisite to regulate anew the manner of nominating these suffragan bishops and the position they held. The regulation was effected by 26 *Hen. VIII* (1534) c 14. By this act an archbishop or bishop, desiring to have a suffragan, shall present to the king two persons, of whom the king nominates one as suffragan bishop, and presents him for consecration to the archbishop in whose province lies the place whence the suffragan's title is derived. The rights of the suffragan are limited by the commission he receives from the diocesan bishop whom he is to assist. As suffragan bishop he has no independent income; his stipend consists of revenues specially assigned him by the bishop and of the fruits of the benefices, as a rule, conferred upon him.[4]

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[3] In isolated cases bishops without dioceses (or without English dioceses) are mentioned in England as early as the tenth and eleventh centuries. Such are (Stubbs, *Registrum* 142):—

Siegfried, a Norwegian bishop of the time of Edgar. William of Malmesbury, *De antiquitate Glastoniensis Ecclesiae* (ed. Migne vol. 179) 1722 C. (Cf. *Historia Eliensis* in Wharton, *Angl. Sacra* I, 603: *Sygidwoldus Episcopus, natione Graecus.*)

[On Siward, abbot of Abingdon, see § 40, note 1.]

Ralph, a cousin of Edward the Confessor, a Norwegian bishop, abbot of Abingdon (1050–1052). *Hist. Abingdon.* (*Rer. Brit. Scr.* No. 2) I, 463, II, 281.

Osmund, consecrated in Poland. Adam of Bremen (*Mon. Germ. Script.* VII) 340 and note 16.

Christiern, a Danish bishop, came to England with Sweyn in 1070. *Anglo-Sax. Chron.* (*Rer. Brit. Scr.* No. 23) I, 345.

Cf. also the lists of Wharton in *Bibliotheca Topographica, l.c.* According to Stubbs, Introduction to *Memorials of Dunstan* (*Rer. Brit. Scr.* No. 63) p. xci Dunstan, afterwards archbishop, was perhaps originally consecrated (957) without a definite see.

[4] *An Acte for nominacion and consecracyon of Suffragans within this Realme.*

s 1. The following towns: Thetforde, Ippeswiche, Colchester, Dover, Gylford, Southampton, Tawnton, Shaftesbury, Molton, Marleburgh, Bedforde, Leycester, Gloucester, Shrewsbury, Bristowe, Penreth, Bridgewater, Nottingham, Graunthan, Hulle, Huntyngdon, Cambridge, the towns of Pereth, Berwyke, Sayncte Germayns in Cornewell and the Isle of Wight are to be sees of suffragans. An archbishop or bishop, being disposed to have a suffragan, shall and may name, elect, present to the king two persons. Upon such presentation the king may give to one of them the title of one of the sees named, provided it be within the same province whereof the bishop that doth name him is. Then the king by letters patent under the great seal presents the chosen to the archbishop of the province in which the see lies, requiring the said archbishop 'to give all such consecrations, benedictions and ceremonies as to the degree and office of a bishop suffragan shall be requisite.'

s 2. The suffragan bishops have the rights given them in the commission of their diocesan bishop, as custom has been.

s 3. The archbishop must fulfil the king's request within three months.

s 4. The suffragan bishops are to have no profits of their sees nor 'any jurisdiction or episcopal power,' except in so far as such profits, jurisdiction etc. are expressly assigned them by their diocesan bishop. Every diocesan bishop may

This act was repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 4, but revived by 1 *Eliz.* (1558/9) c 1 s 2. By degrees, however, the practice of appointing suffragans was discontinued; the last nomination before the nineteenth century took place in the year 1592.[5] For nearly three centuries no such appointments were made. In 1870 a suffragan bishop was again nominated,[6] and the institution has since then again won favour, so that these episcopal assistants are now found in a large number of bishoprics.[7] By 51 & 52 *Vict.* (1888) c 56, the *Suffragans Nomination Act*, some formal difficulties occasioned by the statute of Henry VIII were removed. The older act named certain towns as the only possible sees of bishops suffragan; the king was now empowered to add new towns to the list by order in council.

Before the revival of suffragans proper, from the middle of the nineteenth century onward, it became customary for colonial bishops who had withdrawn temporarily or permanently from their dioceses to officiate as the assistants of English bishops. Such bishops are generally designated 'assistant bishops.'[8] Their position is in part determined by statute and corresponds to that of suffragans. In particular, colonial bishops like suffragans are confined in the exercise of their powers by the terms of the commission wherein the diocesan bishop confers those powers.[9]

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make such assignment in the extent to which it has been customary or to which they think fit. If the suffragan exceeds the jurisdiction assigned him he becomes liable to the penalties of praemunire according to 16 *Ric. II* c 5.

s 5. The diocesan or the suffragan bishop shall provide two bishops or suffragans to assist the archbishop in the consecration and shall bear their reasonable costs.

s 6. The suffragan must have his residence within the see of his diocesan; his residence in the diocese shall serve as residence on his benefice.

s 7. A suffragan may have two benefices with cure of souls.

[5] A suffragan bishop of Colchester.—Charles II in his *Declaration concerning ecclesiastical affairs*, 25th Oct. 1660 (Cardwell, *Doc. Ann.* II, 234 ff.) c 2 contemplated the nomination of suffragans; but no such appointment was actually made.

[6] Perry, *Hist. of Engl. Church* III, 515 c 31 § 1.

[7] According to the *Church Year-Book*, 1894, pp. 583 ff. there were in 1893 suffragan bishops with the following titles: Dover (diocese of Canterbury); Beverley and Hull (York); Marlborough and Bedford (London); Guildford (Winchester); Barrow-in-Furness (Carlisle); Shrewsbury (Lichfield); Reading (Oxford); Leicester (Peterborough); Richmond (Ripon); Southwark (Rochester); Colchester (St. Albans); Swansea (St. David's); Derby (Southwell); Coventry (Worcester).

[8] According to the *Church Year-Book*, 1894, pp. 583 ff. there was an assistant bishop in each of the dioceses of London, Durham, Gloucester and Bristol, Liverpool, Manchester and Peterborough. The assistant bishop in London was for British subjects in northern and central Europe.—According to *Chronicle of Convocation of Canterbury*, 1889, appendix No. 237 p. 8 in the American church 'assistant bishop' means a coadjutor with right of succession.

[9] 15 & 16 *Vict.* (1852) c 52 *An Act to enable Colonial and other Bishops to perform certain Episcopal Functions, under Commission from Bishops of England and Ireland.* Any person who has been bishop of Calcutta, Madras or Bombay or who, in virtue of royal letters patent, is or has been bishop in an English colony, may, at the request and by the commission of any bishop in England or Ireland and with the consent and licence of the archbishop, within the bounds of the see in question, ordain the persons presented to him under

§ 40.

C. ASSISTANTS IN THE EXERCISE OF GOVERNING POWERS AND ALSO IN THAT OF POWERS OF CONFIRMATION, ORDINATION AND CONSECRATION.

Coadjutors.[a]

In the earlier middle ages it was the custom in England as on the continent to give a representative to a bishop who had become physically or mentally unfit to discharge his duties. The position of such representatives in the older times varied in different cases. For the most part,[1] they were only appointed for the duration of the diocesan's incapacity, were not in bishop's orders, and represented the incapacitated prelate only in respect of his powers of jurisdiction and the management of the property attached to the bishopric, or in respect of one of these two departments, whilst his other functions were performed by the bishop of a neighbouring diocese or by a suffragan. In England this older usage seems to have maintained its ground even in the later middle ages.[2] The representatives given the bishop in case of sickness were, from the thirteenth century, entitled coadjutors. On the continent it became more usual as time progressed to appoint, in case of episcopal incapacity, coadjutors of episcopal rank, to give them the power of

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the direction and authority of the bishop of that see, and perform all other functions peculiar to the order of bishops. All the laws as to English ordinations are to be observed. Letters of orders are to be signed by the colonial bishop as commissary of the bishop for whom he officiates, and sealed with the seal of the bishop of the diocese. Colonial bishops commissioned under this act have no jurisdiction in the united kingdom. 16 & 17 *Vict.* (1853) c 49. Colonial bishops may also be commissioned in the same way and with the same effect by colonial bishops. [According to 19 & 20 *Vict.* (1856) c 115 s 4 the rules mentioned were to be applicable to the then bishops of London and Durham after their resignation.]

37 & 38 *Vict.* (1874) c 77 *Colonial Clergy Act.* By s 8 ordinations by a bishop acting under commission, if he is in communion with the church of England, are effective even if the commissioned bishop has not been bishop in an English colony or appointed by royal letters patent. s 13 exempts East Indian bishops from the provisions of 53 *Geo. III* c 155 and 3 & 4 *Gul. IV* c 85 (touching bishops in the East Indies) and from anything in any letters patent issued as mentioned in these acts; they may perform episcopal functions, not extending to the exercise of jurisdiction, in any diocese at the request of the bishop thereof.

[1] On the nomination of the abbot of Abingdon Siward, as coadjutor of the archbishop of Canterbury (*circ.* 1043) cf. *Hist. Abingdon* (*Rer. Brit. Scr.* No. 2) I, 451; William of Malmesbury, *Gesta Regum* (*Rer. Brit. Scr.* No. 90) I, 239.

[2] Gibson, *Codex* 2nd Ed. p. 137. Cf. *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77) I, 47, 94, 203, 205, 253, 273, 275, 301, 302; *Northern Registers* (*Rer. Brit. Scr.* No. 61) p. 406.—On the appointment of coadjutors for officers of the church other than bishops see Gibson, *l.c.* pp. 137, 901, *Reg. Ep. Peckham* I, 57, II, 654; cf. II, 658.

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[a] Phillimore, *Eccles. Law* 99 ff.

representing the diocesan bishop in all respects, and to grant them, at the same time, the right of succeeding to the see in question.[3]

By an imitation of this latter proceeding the appointment of coadjutors in bishop's orders and with a right to the succession has been introduced by statute to meet the case of permanent mental infirmity of any bishop.[4] If such infirmity be credibly established,

[3] Richter, *Kirchenrecht* § 140. Hinschius, *Kirchenrecht* II, § 89.

[4] 32 & 33 *Vict.* (1869) c 111 *An Act for the relief of Archbishops and Bishops when incapacitated by infirmity.* [According to s 16 the act was only temporary; its effect was prolonged by 35 & 36 *Vict.* (1872) c 40; it was made permanent by 38 *Vict.* (1875) c 19.—By s 15 an earlier act, 6 & 7 *Vict.* (1843) c 62 is repealed. According to the latter act, in case of incapacity from mental infirmity, a bishop was appointed to perform the episcopal functions and a spiritual person to assist in the administration of the temporalities, but without right of succession to either of those appointed.]

s 1. Short title: *The Bishops Resignation Act*, 1869.

s 2. In case it is represented to the sovereign by the archbishop in respect of a bishop subordinate to him or of himself that such bishop or archbishop is desirous of resigning owing to age, or mental or some permanent physical infirmity, then the sovereign, if satisfied of the incapacity and that the archbishop or bishop has canonically resigned, may by order in council declare the see vacant, and the vacancy may thereupon be filled. The retiring archbishop or bishop receives $\frac{1}{3}$ of the income or £2000, whichever may be greater; the sovereign may by order in council assign him any episcopal residence hitherto occupied by him; the new bishop need not pay fees and charges usually payable on accession to an archbishopric or bishopric (other than necessary expenses of election and consecration) until the death of the retiring archbishop or bishop.

s 3. If an archbishop believes that any bishop in his province is incapacitated by permanent mental infirmity from the due performance of his duties, he shall call to his aid two bishops of his province, make inquiry and certify the result of that inquiry under seal to one of the principal secretaries of state.

s 4. The king may then grant the chapter licence to elect a bishop coadjutor, the licence being accompanied by letters missive. The election shall then take place in the same way as a bishop's election (cf. append. X). The elected person shall be confirmed and consecrated, as if the bishopric were vacant.

s 5. The incapacitated bishop and the coadjutor have the following relative positions: (1) The bishop retains his rank, style and privilege. (2) He retains the temporalities exclusive of patronage and of a yearly sum to be paid the coadjutor. (3) The coadjutor shall not be installed or sue the temporalities out of the sovereign's hands; he has no claim to a seat in the house of lords; he shall be styled 'bishop coadjutor' of the diocese, may subscribe himself by his usual signature with the addition of bishop, but not by the name of the diocese. (4) He is not required to pay any fees except the necessary expenses of election and consecration. (5) Immediately on his consecration the spiritualities and the patronage pass to him, as if he were the sole bishop. (6) He receives £2000 a year out of the income of the bishop. (8) On the death of the bishop the coadjutor succeeds with the same ceremonies (except consecration) as if the king had sent licence and letters missive. (9) No vacancy is created in the spiritualities when the bishop dies, but such spiritualities remain vested in the coadjutor if succeeding to the deceased bishop.

s 7. If the bishop has been found by due process of law to be of unsound mind, the inquiry by the archbishop may be dispensed with.

s 10. If a coadjutor dies or retires, the king has the same rights as on receipt of a certificate that a bishop is incapacitated (see s 3).

s 11. The act applies to Sodor and Man. But if the bishop retires his pension is fixed at £1000; the salary of a coadjutor is likewise £1000; the bishop of Sodor and Man shall not be translated to any diocese of which a coadjutor bishop has been appointed.

the sovereign may send to the chapter leave to elect, accompanied by letters missive. The election and consecration of the coadjutor then takes place as in the case of a diocesan bishop. All the official powers and the patronage of the bishop represented pass to the coadjutor. But if the represented bishop is an archbishop, the archiepiscopal jurisdiction is exercised not through the coadjutor but through the bishop of the province who is senior in rank. The incapacitated bishop always remains in possession of the temporalities, exclusive of the patronage. On his death the coadjutor becomes his successor; the sovereign, however, may, if the deceased bishop was an archbishop or the bishop of London, Durham or Winchester, translate another bishop to the vacant see, in which case the coadjutor becomes the successor of the translated bishop.

§ 41.

D. ADMINISTRATION OF AN ARCHBISHOPRIC OR BISHOPRIC DURING VACANCY.[a]

From the time of William II[1] onward, the sole[2] interruption being during the reign of Stephen,[3] the English kings exercised the right of administering the temporalities during vacancy in an archbishopric or bishopric, and receiving for the crown the revenues of

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s 12. A coadjutor may be appointed in the case of an archbishop being incapacitated. The provisions of the act then apply with the following additions and exceptions: (1) At the head of the commission of inquiry is to be a bishop of the province determined by the sovereign under sign manual on its being certified to him by any two bishops that the archbishop is incapacitated by permanent mental infirmity from the due performance of his duties. (2) A coadjutor for Canterbury receives £4000 a year, for York £3000. (3) *That the archiepiscopal jurisdiction capable of being exercised by the archbishop shall be exercised by the bishop of the province who is senior in rank.*

s 13. If the coadjutor was appointed for Canterbury, York, London, Durham or Winchester, the king may *exercise the same right of translation as if no bishop coadjutor had been appointed, so that such right be so exercised as to leave an archbishopric or bishopric vacant for the bishop coadjutor.* The coadjutor then succeeds to the vacant see as if he had been translated to it.

[1] Cf. § 4, note 19. On the usage in the time of William I compare Ordericus Vitalis (Ed. of Le Prevost) II, 200 Book IV c 6: *Nam dum pastor quilibet completo vitae suae termino de mundo migraret, et Ecclesia Dei proprio rectore viduata lugeret, sollicitus princeps prudentes legatos ad orbatam domum mittebat, omnesque res Ecclesiae, ne a profanis tutoribus dissiparentur, describi faciebat;* on the usage in the Anglo-Saxon period cf. *l.c.* III, 313, Book VIII c 8.

[2] Cf. § 4, note 22 on Henry I's concession. It is perhaps to be taken merely as a renuntiation of the appropriation of the substance not of the interim fruits. If, however, the words of the charter are to be regarded as a renuntiation of the fruits as well as the substance, the concession was not in practice observed in Henry's time.

[3] Stephen's concession in his charter, 1136 (appendix II). Cf. also the report of Henry of Huntingdon (§ 4, note 31).

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[a] Phillimore, *Eccles. Law* 77 ff.

the estates.[4] This corresponded to the right of usufructuary administration of a fief during a vassal's minority. Sometimes in the earlier days the kings abused their right to the interim revenues by keeping the see empty for years, so as to enjoy the fruits as long as possible. It was in repudiation of this practice that Henry II, in the compact of 1176, promised not to keep the property of a bishopric in hand for more than a year, whilst John in the charter of 1214 had to give an assurance that he would not unduly delay to grant licences for new elections.[5] The kings originally entrusted the administration to special *custodes*, afterwards, from the reign of Henry II onwards, to *escheators*, officers appointed to deal with reverting fiefs.[6] By 14 *Ed. III* (1340) st. 4 it was laid down that the chapter or convent was entitled before any one else to take the temporalities of the bishopric in farm during vacancy.[7] Every new bishop had to sue from the king delivery of the temporalities of his see; many reservations were attached thereto, which were used by the kings in the later middle ages to thwart papal encroachments

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[4] Of later confirmations and closer limitations of this right the following are to be mentioned in particular:—

Const. Clarendon c 12 (append. IV). Limitation to one year in the compact of 1176 c 2 (§ 4, note 54).

John's charter of 1214 (append. VI), *Magna Carta* of 1216 c 5 (append. VII, note 5); cf. *Magna Carta* of 1215 c 46 (append. VII). Cf. also the complaint of selfish administration, contrary to the assurance given by *Magna Carta*, at the council of Merton, 1258 (Wilkins I, 739, after *Ann. Burton*).

52 *Hen. III* (1267) *Stat. de Marleberge* c 16: *De hereditatibus autem quae de domino Rege tenentur in capite sic observandum est; ut dominus Rex liberam inde habeat seysinam sicut prius consuevit; nec heres vel alius in hereditatem se intrudat priusquam illam de manibus Domini Regis recipiat, prout huiusmodi hereditates de manibus ipsius et antecessorum suorum recipi consueverint. Et hoc intelligatur de terris et feodis in ratione servicii militaris vel serjancie seu juris patronatus que in manu Regis esse consueverunt.*

3 *Ed. I* (1275) *Stat. Westminster I* c 21: *Endreit des teres des heyrs dedenz age que sont en la garde lur Seygnur, Purveu est que les gardeins les gardent et sustengnent saunz destruction fere en tote riens; Et que tels maneres de gardes seit fet en tutz pointz, solum ceo que il est, contenu en la Graunt Chartre des fraunchises le Rey Henri piere le Rey que ore est, e issi seit usee desoremes; et par mesme la manere seient gardez les Erceveschees, Eveschees, Abbeyes, Eglises, et Dignetiez en tens de Vacacions.*

Cf. further *Stat. Prerogativa Regis* (probably dating from the time of Edward I and before Britton and Fleta, thus 1272–90, perhaps only a private essay, F. W. Maitland in *Engl. Historical Review*, 1891, p. 367; printed in *Statutes of the Realm* I, 226) c 16, *Capitula Escaetrie, sub fin.* (of unknown date; printed *l.c.* I, 238 ff.) and the documents cited in Friedberg, *De fin.* (cf. § 60, note *a*) p. 221.

[5] Cf. above, note 4.

[6] Gneist, *Engl. Verfassungsgeschichte* § 12.

[7] cc 4, 5. The escheators who manage the temporalities of prelates during vacancy, shall not waste them. The chancellor and treasurer with others of the council may, on receipt of full value and upon sufficient security given, let the voidances, before all others, to the dean and chapter, prior or subprior, prioress or subprioress. If the latter do not agree to give the full value, the voidances are to be administered by escheators.—21 *Hen. VIII* (1529) c 13 prohibits the taking of farms by spiritual persons; by s 4 exempted from the operation of the act are the temporalities during vacancy of bishoprics etc. 'and other collegiate, cathedral and conventual churches.'

in respect of rights of appointment.[8] Even at the present day the crown exercises the right of usufructuary administration of the temporalities of vacant archbishoprics and bishoprics.

The guardian of the spiritualities during vacancy was, in the twelfth century, the chapter, and this was in accordance with the usage[9] which prevailed on the continent. In the course of the thirteenth century disputes arose in many parts of England between the chapters and the archbishops, the latter claiming the interim guardianship of the spiritualities. The archbishops ultimately gained the right, either by prescription or by composition, in respect of most sees;[10] they exercise it in person or by their commissioners. But the old right of the chapters has been maintained in some places; in particular, the dean and chapter are guardians of the spiritualities when an archiepiscopal see is vacant.

§ 42.

6. ARCHDEACONS.[a]

Archdeacons have been mentioned in England since the beginning of the ninth century.[1] In the period of the Norman conquest their

[8] More in Stubbs, *Const. Hist.* III, 317 ff. c 19 §§ 383 ff.

[9] Cf. Richter, *Kirchenrecht* § 136.

[10] Compare, *e.g.* in regard to Lincoln: *Ann. de Dunstapl.* (*Rer. Brit. Scr.* No. 36 *Ann. Monastici*) III, 187, 189. Wilkins I, 756; London: *Reg. Ep. Peckham* (*Rer. Brit. Scr.* No. 77) I, 96; Winchester: *l.c.* I, 98; Worcester: *l.c.* II, 632.

[1] The first archdeacon mentioned in England is Wulfred, afterwards (805) archbishop of Canterbury. Stubbs, *Const. Hist.* I, 254, note 4, c 8 § 87. He puts name and title to a resolution of the council of Clovesho, 803 (Haddan and Stubbs, *Councils* III, 546) and to a deed of gift of Aethelheard, archbishop of Canterbury, dated 805 (Kemble, *Cod. dipl.* I, 231 f.). The document relating to the alleged council of Beccancald, 798. where his signature also appears, is not genuine (Wilkins, *Concilia* I, 162; Haddan and Stubbs, *Counc.* III, 518).—Florentius Wigorniensis, *Chron.* (*Monumenta Historica Britannica* I, 587) mentions an archdeacon Aelmaer who is said to have betrayed Canterbury to the Danes in 1011. In the Anglo-Saxon Chronicle (*Rer. Brit. Scr.* No. 23) I, 266, 267, from which Florentius draws, the traitor is not designated 'archdeacon.' From the context this Aelmaer or Aelfmaer seems to be identical with the abbot of the same name of the monastery of St. Augustin at Canterbury, whom the Danes set free after the taking of the town.—The *fragmentum de Institutione Archidiaconatus Cantuariensis* (printed in Wharton, *Anglia Sacra* I, 150; written apparently shortly after the death of archbishop Peckham, 1292) contains the statement that, in the diocese of Canterbury, an archdeacon was first appointed under Lanfranc in place of the earlier bishops of St. Martin at Canterbury who until then had occupied an archidiaconal position. (Cf. § 39, note 2.)—As to the probable existence of an archdeacon of the abbot of St.

[a] Gibson, *Of Visitations Parochial and General.* London, 1717.—Phillimore, *Ecclesiastical Law* 236 ff.—Report of the 'Committee on the Duties of Archdeacons,' of the lower house of Convocation. Appendix, No. 183 to the *Chronicle of the Convocation of Canterbury*, 1885.

position developed, so that the bishop's one archdeacon acted as his highest official in carrying on the external government of the church. The archdeacon frequently represented the bishop; in this capacity he is also mentioned as present at the court of the hundred.[2] Whether and how far he in England at this period already claimed the rights he exercised as his own, is not precisely determined. Priests are bidden under threat of punishment to obey the orders of the archdeacon.[3]

Soon after the Norman conquest mention is made of the existence in some dioceses of *several* archdeacons.[4] In the course of the twelfth and thirteenth centuries the appointment of several archdeacons became usual in the majority of English bishoprics. Where

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Edmunds at the end of the eleventh century see Liebermann, *Anglonormannische Geschichtsquellen*, 227. But cf. Arnold in *Rer. Brit. Scr.* No. 96, I p. xxix.—In the rule of Chrodegang for secular canons (*circ.* 760; given in its original form by Mansi, *Concilia* XIV, 313 ff.), which also served as a model at some places in England (§ 37, note 7), the 'archdeacon or other superior (*vel primicerius*)' is mentioned as exercising superintendence over the chapter next after the bishop. In a later form of the rule (9th century) the *archidiaconus vel praepositus* is named. Richter, *Kirchenrecht* § 134, note 2. In the Aachen rule (816–7) based on Chrodegang's (Aachen rule in Mansi, *l.c.* XIV, 153 ff.) there is no mention of the archdeacon as standing at the head of the chapter, but *praepositi* in the wider sense, embracing every kind of superintendent, even the bishop, are spoken of. See also c 139 of the Aachen rule: *Quamvis omnes qui praesunt, praepositi rite dicantur, usus tamen obtinuit, eos vocari praepositos, qui quandam prioratus curam sub aliis praelatis gerunt.*—The precursor of the archdeacon was the bishop's deacon (§ 38, note 1). On the much earlier development of the archdeacon's office on the continent cf. Richter, *Kirchenrecht* § 137, Hinschius, *Kirchenrecht* II, 183 ff.

[2] William I's charter (probably *circ.* 1070; fully printed in appendix I): . . . *ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundret placita teneant, . . . sed quicunque . . . interpellatus fuerit, ad locum quem . . . episcopus elegerit . . . veniat . . .* Further on in the charter, *justitia episcopalis* is spoken of.

[3] Northumbrian priest-law (Schmid, appendix II; probably about the tenth century) c 6: *Gif preôst arcediacones geban forbûge, gilde XII ôr.* ("If a priest does not obey the order of an archdeacon, let him pay twelve pieces.") c 7: *Gif preôst scyldig sŷ, and he ofer arcediacones gebod maessige, gilde XII ôr.* ("If a priest be guilty and he read mass against the archdeacon's bidding, let him pay twelve pieces.")

[4] Compare the following examples: At the transference of the episcopal seat from Dorchester to Lincoln (*circ.* 1075 or 1085; on the date see Perry, *Hist. of Engl. Ch.* I, 166, note 1 c 11 § 11) bishop Remigius composed the chapter of a dean, a treasurer, a precentor and seven archdeacons. Letter of Henry of Huntingdon to Walterus, in Wharton, *Anglia Sacra* II, 695.—Thomas I of York (1070–1100) divided his diocese into five archdeaconries. Report of committee, *l.c.* p. 8.—Lanfranc to Stigand, bishop of Chichester, 1070–87 (ed. Giles, p. 50) *vestri archidiaconi.*—On the transference of the episcopal seat from Sherborne to Salisbury (1078) four archdeacons were instituted. Report of the chapter of Salisbury, 1259, in Wilkins, *Concilia* I, 741.—Summons of the bishop of Llandaff by archbishop William of Canterbury to a legatine council, 1125 (Haddan and Stubbs, *Councils* I, 317): . . . *occurras cum archidiaconibus . . . tuae dijocesios.*

About 1175 there were created in the diocese of Canterbury three archdeaconries instead of the one previously existing. Ralf de Diceto, *Ymagines Historiarum* (*Rer. Brit. Scr.* No. 68) I, 403. But five years later there was a return to the old system. Le Neve, *Fasti* I, 38.

this happened, each of the archdeacons had a special district[5] assigned him within the diocese; the limits of this district generally coincided with those of a county.[6]

The archdeacons of those days were at the same time members of the episcopal chapter.[7] They had to be in deacon's orders.[8]

The rights of archdeacons, on the one hand as against the bishops, on the other as against rural deans and priests, developed in various ways in the different dioceses. In some cases the archdeacons remained essentially what they had been before: officers of the bishop, dependent on his mandate and having no separate rights of administration or jurisdiction.[9] In most places,[10] however, they acquired the right of exercising independent control over rural deans and parish priests, of visitation within their archdeaconries, and of inflicting punishments and pronouncing judgment to the same, or almost the same, extent as the bishop.[11] From the thirteenth

[5] Cf. John de Actona (shortly after 1332), gloss. to const. Otho, *De Archidiaconis* (tit. 19), note c: *generalis archidiaconus, qui non habet Archidiaconatum distincte limitatum, sed tanquam Vicarius fungitur vice Episcopi universaliter: . . . quia talis repraesentat Episcopum, . . . sed secus videtur in eo, qui habet distinctam limitationem sui Archidiaconatus: tunc enim habet Jurisdictionem separatam ab Episcopo, quae cum sit consuetudinaria, potest praescribi . . . Hoc notat . . . Guido de Bayso, Rosarium gloss to Decretum pars II causa IX, qu. 3, c 7 . . .*

[6] Stubbs, *Const. Hist.* I, 131, c 5 § 50.

[7] Compare *e.g.* the reports as to Lincoln and Salisbury, cited above in note 4.

[8] Council of *London*, 1102 (Wilkins I, 382) c 4: *Ut archidiaconi sint diaconi.* Legatine council of *London*, 1125 (Wilkins I, 408) c 7: *Nullus . . . in archidiaconum nisi diaconus promoveatur.* Council of *Westminster*, 1127 (Wilkins I, 410) c 4: *Nullus . . . in archidiaconatum nisi diaconus constituatur.*—Cf. also Letters Nos. 123 and 139 of the archdeacon of Bath, Peter of Blois (ed. Giles, I, 378, II, 32).—On the continent exceptional cases of archdeacons in priest's orders occur even before the eighth century, and sometimes in the eighth and ninth centuries. But even in the twelfth and thirteenth centuries, as a rule, only deacon's orders were required. Hinschius, *Kirchenrecht* II, 186, note 6, 189, note 2, 200, notes 3–5.—14 *Car. II* (1662) c 4 *An Act of Uniformity* s 10 prescribes that an 'Ecclesiastical Promotion or Dignity,' therefore also an archdeaconry may only be bestowed on a priest.

[9] In 1835 there was in the following dioceses only one archdeacon: Canterbury, Bristol, Carlisle, Ely, Gloucester, Llandaff, Oxford, Peterborough, Rochester, St. Asaph, Worcester, Sodor and Man (Dansey, *Horae Decanicae Rurales* II, 345 ff. Le Neve, *Fasti*). According to Phillimore 242 the archdeacon of Carlisle, for instance, had no independent jurisdiction. According to Dansey, *l.c.*, there was in 1835 in the diocese of Chester an archdeacon of Chester and a commissary of Richmond, the latter in an archidiaconal position; neither had then as *archdeacon* any independent rights; but they were rural deans of all the deaneries lying in their districts. According to Dansey, *l.c.*, in 1835 the four archdeacons of the diocese of St. David's were also without rights of jurisdiction.

[10] In some English bishoprics the archdeacons even early in the twelfth century acquired independent rights of jurisdiction; it was so in the archdeaconry of Richmond. Stubbs, *Hist. Append. I* to *Report of Eccles. Courts Commission*, 1883, p. 26.

[11] Richter, *Kirchenrecht* § 137, note 5: According to the decretals the archdeacons have the following rights:—

1. Supervision over the churches and church property of their district, sometimes the right of canonical visitation. cc 1, 3, 6, 7, 10 *Extra* I, 23.

century their competence began to extend itself at the cost of the rural deans; in particular, the presidency of the rural chapters

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2. The investiture of the clergy and the examination of candidates for ordination. cc 4, 7, 9 *Extra* I, 23.
3. The exercise of penal jurisdiction in the synodal courts (*Sendgerichte*). c 54 *Extra* I, 6; c 3 *Extra* V, 37.
4. The exercise of contentious jurisdiction. c 7 *Extra* I, 23.
5. The right to procurations. c 6 *Extra* III, 39.
6. [In co-operation with the bishop] the institution and deposition of rural deans. c 7 *Extra* I, 23.

It must not, however, be forgotten that the rights as stated were not universal, and that special local developments of the office, which were very various, must be taken into account.

In England, so far as archdeacons had gained an independent position, the following remarks are applicable:—

1. The archdeacon had the right and the duty of visitation. Constitutions of archbishop Langton, of legate Otho (1237), of archbishop Reynolds, of archbishop Stratford. See more in Phillimore 241, 1346 ff. In the concordat reached at the council of Constance (cf. § 4, note 127: c 8) the pope bound himself only in special cases to allow the archdeacons to make their visitations *per procuratores*. Cf. also the Report of the Committee (appendix to *Chron. of Conv. Cant.* 1885, No. 183) pp. 9, 31 on the distinction drawn by Lyndwood between *visitatio* and *capitulum* of archdeacons. At the beginning of the nineteenth century visitation of all the several parishes no longer took place, but in lieu thereof (by the same process of development as that of episcopal visitations) assemblies were held, or, in other words, the visitation became synodal. Dansey, *Horae Decanicae Rurales* (in the year 1835) II, 107[1], 413. According to Phillimore, *l.c.* 1355, it had been for three centuries usual for the archdeacons to divide the archdeaconry into districts, and to hold the visitation for all the parishes of that district at some one parish church within the district. On the right of the archdeacons to hold visitations cf. also 4 & 5 *Vict.* (1841) c 39 s 28 (now repealed as obsolete; printed in § 36, note 2). On the present usage see fully in Committee Report, *l.c.* pp. 32 ff., 41. According thereto assemblies take place yearly, generally one common one for the whole archdeaconry, sometimes several, distributed over the districts of the archdeaconry. To assemble are the clergy, churchwardens and sidesmen. The archdeacon delivers a charge, admits the newly chosen churchwardens, and receives presentments and the answers to the articles of inquiry. Visitation of a single parish is only upon special occasion.

2. That the archdeacon examines the candidates for ordination is assumed in the ordinal (dating from Edward VI; cf. § 15) the rubric in which prescribes that the archdeacon or his deputy shall present to the bishop those who desire to be ordained. Cf. canon 31 of 1604 (in appendix XII). At the present day the archdeacon of the cathedral district is frequently but not always one of the examining chaplains. Cf. § 20, note 19.

The induction of the clergy into the possession of their benefices belonged in the thirteenth century often, perhaps as a rule, to the rural deans. Cf. § 43, note 4. As the latter sank to a lower position, the right was frequently acquired by the archdeacons. Induction is now generally by the archdeacon or his deputy; but there are other usages at particular places. See Phillimore, *Eccles. Law* 477.

3. The archdeacon had penal jurisdiction. Can. 109 ff. and 121 of 1604 (append. XII), in connexion with the heading of the section in question (IX). This penal jurisdiction is now, as against laymen, almost entirely abolished. Cf. § 61, notes 19 ff., note 9. As against beneficed clergymen, canon 122 of 1604 reserved decision in important cases to the bishop. According to the Clergy Discipline Acts 3 & 4 *Vict.* (1840) c 86 s 23 and 55 & 56 *Vict.* (1892) ss 2, 8 penal or disciplinary proceedings against clergymen can only take place before an episcopal or an archiepiscopal court.

passed, for the most part, to them.[12] They frequently availed themselves in administration and in pronouncing judgment of an official.[13] Their relation to the chapter of their episcopal superior became gradually less close. In many places, it is true, the archdeacon remained a canon in the chapter church of the bishopric; but in others the archdeaconry was entirely cut off from all connexion with a chapter or was combined with a canonry in another diocese.[14]

The archdeacon was, as a rule, appointed by the bishop; but there were also archdeaconries in the gift of laymen.[15]

The various reforming enactments (1830–40 and later) of this century have had the effect of rendering the positions of the archdeacons in the several bishoprics more uniform.[16] All archdeacons have according to these acts full and equal jurisdiction.[17] At present all the dioceses in England and Wales are divided into

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4. The competence of the archidiaconal court in civil causes was variously limited at different places. For the most part its jurisdiction was the same as that of the bishop's court, and the litigant might commence his suit in either; though in some archdeaconries the suit had to be commenced in the former to the exclusion of the latter. Stephen, *New Commentaries* 11th Ed. III, 330, note *q*. Cf. § 65.

5. Archdeacons have a right to procurations; these are now made in money instead of victuals and other provisions. Archdeacons also receive upon their visitations a fee, the amount of which is now fixed by 30 & 31 *Vict.* (1867) c 135. See Phillimore, *l.c.* 1355 f., 1359 ff.

6. On the rights of the archdeacons in the appointment of rural deans cf. § 43, near notes 18 ff. On the right to deprive see above, 3.

[12] Cf. § 58, notes 2, 3.

[13] Cf. § 65.

[14] Phillimore, *Eccles. Law* 238.—The induction of the archdeacon to his office is thus: the dean and chapter after some ceremonies place him in a stall in the cathedral church. 3 & 4 *Vict.* (1840) c 113 ss 16, 33 ff. contains regulations for combining canonries with poorly-endowed archdeaconries. At present only a certain number of the archdeaconries are combined with canonries.

[15] Phillimore, *l.c.* 240.

[16] The preamble to 6 & 7 *Gul. IV* (1836) c 77 gives the following suggestions for the orders in council to be published on the representations of the ecclesiastical commissioners: seven new archdeaconries are to be founded and districts assigned to them; the dean of Rochester is to receive archidiaconal powers in the part of Kent left to Rochester (this is abrogated by 26 & 27 *Vict.* [1863] c 37 s 3); the boundaries of all rural deaneries and archdeaconries are to be so altered that every parish and extra-parochial place be within a rural deanery, and every rural deanery within an archdeaconry, and that no archdeaconry extend beyond the limits of one diocese; all archdeaconries are to be in the gift of the bishop of the diocese; all archdeacons shall have full and equal jurisdiction within their archdeaconries. By 3 & 4 *Vict.* (1840) c 113 s 20 it is allowable, upon the representation of the bishop and with his consent under seal, to divide archdeaconries and rural deaneries. According to s 34 it is laid down that when the income attached to a poorly endowed archdeaconry is augmented, the augmentation shall not be such as to raise the average annual income of the archdeaconry to an amount exceeding £200. By 37 & 38 *Vict.* (1874) c 63 the regulations of the acts previously cited as to changing boundaries, new founding etc. of rural deaneries and archdeaconries are further explained.

[17] 6 & 7 *Gul. IV* (1836) c 77 s 19: *And . . . enacted, That all Archdeacons throughout England and Wales shall have and exercise full and equal Jurisdiction within their respective Archdeaconries, any Usage to the contrary notwithstanding.*

several archdeaconries, from two to four each.[18] No person may be appointed to the office who has not been six years in priest's orders.[19] Appointment is (except in a few cases [20]) by the bishop. Before final conferment of the office the archdeacon has to take the same oaths and make the same declarations as are prescribed for a parish priest.[21]

§ 43.

7. RURAL DEANS.[a]

The rural dean [1] is the representative of ecclesiastical government within a smaller district of the bishopric, viz. within the deanery.

It is not precisely known when rural deans were first appointed in England. The necessity for such appointments could not have arisen before fixed parochial districts had been established in such numbers that the bishop could no longer exercise immediate superintendence over them. But the complete resolution of England into such districts only took place in the course of the eighth century, and the number of them increased but slowly. The first trustworthy accounts of the existence of rural deaneries in England

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[18] Conspectus in *Church Year-Book*, 1894, pp. 583 ff.—In the bishopric of Sodor and Man there is only one archdeacon.

[19] 3 & 4 *Vict.* (1840) c 113 s 27: *That no person shall hereafter be capable of receiving the appointment of dean, archdeacon, or canon, until he shall have been six years complete in priest's orders, except in the case of a canonry annexed to any professorship, headship, or other office in any university.*

[20] At the present time there are the following exceptions:—

1. The archdeacon of Westminster is appointed by the dean of Westminster from among the canons. His office is, since the peculiar of the dean and chapter has been taken away, only titular.

2. The archdeacon of the isle of Man is appointed by the crown through the home office.

Moreover the crown appoints (and these rules apply also to other cases besides archdeaconries):—

1. When the vacancy has been caused by the raising of the preceding archdeacon to the episcopate.

2. During vacancy of a see.

Chron. of Conv. Canterbury, 1885, appendix No. 183 p. 60, note 3.

[21] 28 & 29 *Vict.* (1865) c 122 *Clerical Subscription Act*, 31 & 32 *Vict.* (1868) c 72.—According to Phillimore, *Eccles. Law* 241, an archdeaconry is a benefice with cure, but not such a benefice with cure as is intended by 13 *Eliz.* (1571) c 12 *Subscription Act*, so that archdeacons are not within the scope of that act; but they are included under 14 *Car. II* (1662) c 4 *Act of Uniformity*.

[1] The rural dean is designated *decanus ruralis* or *archipresbyter ruralis*, in older documents also 'dean of Christianity.' On the meaning of *plebanus* see Dansey I, 150 ff., Richter, *Kirchenrecht* § 142, note 1.

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[a] Dansey, *Horae Decanicae Rurales, being an attempt to illustrate by a series of notes and extracts the name and title, the origin, appointment and functions, personal and capitular of Rural Deans*. 2 vols. London, 1835. (With app. containing documents; references are to paging of 1st Ed.) 2nd Ed. London, 1844.—Speech of Atterbury to the clergy of the archdeaconry of Totnes, 1708. *Atterbury's Correspondence* vol. II pp. 234-254, printed in Dansey vol. II p. 390.—Kennet, *Parochial Antiquities* Ed. 1818, II, 337-70.—Phillimore, *Eccles. Law* 251 ff.

with definite boundaries are of the twelfth century; yet at that time the rights of the rural deans were already fully developed. It may therefore with probability be assumed that the creation of rural deaneries took place before the division, which dates from the middle of the eleventh century, of dioceses into several archdeaconries.[2]

Originally the rights of the rural deans were derived solely from the bishop, and the substance of the commission granted by him determined their powers. But by degrees the opinion prevailed that the office itself brought with it distinct rights and duties. The rural deans had thus in the twelfth and thirteenth centuries the general supervision of the clergy and—in the sphere of ecclesiastical

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[2] Signatures of rural deans are found in documents of the twelfth century. Examples in Dansey I, 106. The law book *leg. Ed. Conf.* (written probably at the beginning of the twelfth century) mentions (text of *codex Harleianus* c 27) that on a breach of the king's peace a fine of 100 sol. should be paid to the king, 50 to the earl and 10 to the 'dean.' The readings given in some MSS. *decanus episcopi, in cujus decanatu pax fracta fuerit* or *decanus episcopi, si intus decanatum pax fracta fuerit*, wherein there is express reference to an *ecclesiastical* dean and a local division into deaneries, are seen to be interpolated from the fact that in two immediately following passages (text of the *codex Harleianus* cc 28, 29; text of Roger of Hoveden c 26 pr. and § 2) *secular* deans are beyond all doubt spoken of. The readings in question are due to a later revision of the original book. [The secular *tithings*, *decaniae*, most probably denote, at least in the Anglo-Saxon period, not local divisions but groupings of persons. Schmid, *Gesetze der Angelsachsen*, glossary s.v.q.e. *Rechtsbürgschaft; Consiliatio Cnuti* (ed. Liebermann), Addition to I c 19.] On the view that the *leg. Ed. Conf.* c 2 § 8 perhaps has reference to rural chapters, see § 58, note 1. Cf. also *Chronicon Abbatiae de Evesham* (*Rer. Brit. Scr.* No. 29; the part here in question was written in the beginning of the 13th cent.) p. 83: *Iste etiam abbas* (Aelfward, abbot of Evesham and bishop of London), *postquam Aldulfus episcopus Wigorniae hanc abbatiam sibi et successoribus suis subjecerat, primus abbatum in libertatem proclamavit, et in tantum obtinuit quod venerabilem virum Avitium hujus ecclesiae priorem decanum Christianitatis totius vallis constituit, quam nunquam libertatem ecclesia ista postea amisit* (Avitius died 1037–8). The ecclesiastical deaneries of the twelfth century corresponded in great part, but not always, to the civil hundreds. Stubbs, *Const. Hist.* I, 121 c 5 § 47.—Many authors assign the establishment of rural deaneries to a much earlier age than that suggested in the text, but without satisfactory proofs. Cf. Dansey I, 77–107. On the monastic deans of the Anglo-Saxon period cf. § 37, note 6. The Northumbrian priest-law (time of origin unknown, perhaps about tenth century) cc 1, 2, 45; Aethelred VIII cc 24, 27 (laws of 1014); Knut (1016–35) I c 5 §§ 2, 3; the treatise *Be hâd-bôte* (Schmid, *Gesetze der Angelsachsen*, app. IX) c 12; *Canones sub Edgaro* (after Wilkins, *Concilia* I, 225; *circ.* 960) c 7 and other documents mention *gefêran*, *gefêrscipe* of a clergyman. The reference is perhaps not to some small community, but to the whole of the clergy belonging to the bishop's synod. (To be compared is North. priest-law c 1 with *can. sub Edgaro* c 5.) Similarly is perhaps to be understood the mention of the *gildscipe* of a clergyman in *can. sub Edgaro* c 9. A priests' guild in Canterbury is mentioned in *Domesday* I, 3 as possessing land: *In Civitate Cantuaria habet Archiepiscopus XII burgenses et XXXII mansuras quas tenent Clerici de villa in gildam suam.* (Compare here Stubbs, *Const. Hist.* I, 451 c 11 § 131, Somner, *The Antiquities of Canterbury* Ed. 1703, I, 178 f.) On the disputed meaning of the secular guilds mentioned in the Anglo-Saxon laws see Schmid, *Ges. d. Angels.* s.v.q.e. *gegilda*.—In other countries rural deans were found from the sixth century onward. Richter, *Kirchenrecht* § 138, note 1.

competence—of the laity of their deaneries, and they probably exercised their superintendence by formal visitations[3] as well as in other ways. They inducted parish priests into their benefices,[4] and administered the benefices when vacant.[5] They decided smaller matters in virtue of their own powers, but to an extent which varied with the locality, and perhaps not in all dioceses.[6] In more important cases they frequently conducted the necessary inquiries, judgment being pronounced in earlier times by rural chapters and episcopal synods, in later by archidiaconal and consistory courts. They, furthermore, co-operated, as a rule, in raising ecclesiastical and civil taxes,[7] and discharged a large number of minor duties differing with the locality.[8] Lastly, they had the right to convene assemblies (rural chapters) of the clergy subordinated to them, and in these assemblies they presided.

With the middle of the thirteenth century all these rights began to undergo considerable limitations. The restriction arose from the endeavour of episcopal officials and archdeacons, well versed in the new books of canon law, to attract as much business as possible into their own courts; moreover, the increase, taking place at this time, in the power of the archdeacon as against the bishop weakened the position of the rural dean, who was subject to the archdeacon.[9] The deans by degrees lost almost all independent authority, and some time prior to the reformation their powers extended only as far as commission from bishop or archdeacon allowed. It would also seem

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[3] Dansey I, 156 ff., 164 ff. On the other hand see Gibson, *Codex* 972. Council of London, 1200 (taken. it is true, among other regulations from the Lateran council of 1179): at visitations archbishops shall take with them only five or seven, deans only two horses. Archdeacons only are mentioned as visiting in the text (it is otherwise in the heading) of an episcopal constitution of Worcester, 1240, where reference is made to the council of London (Wilkins, *Conc.* I, 671). Cf. also *Const. Ben.* XII (1335) *super procurationibus visitantium* (Wilkins, *Conc.* II, 578.)

[4] Episcopal const. of *Worcester*, 1240 (Wilkins, *Conc.* I, 671): *Decani etiam pro missionibus clericorum in possessionem ecclesiarum, in quibus fuerint per episcopum instituti, nihil omnino recipere vel extorquere praesumant.* Rescript of Innocent III to archbishop of Canterbury in Dansey I, 372.

[5] Episcopal const. of *Worcester*, 1240 (Wilkins, *Conc.* I, 675): *Terrae ecclesiarum vacantium incultae non jaceant, sed per decanum loci excolantur . . .* Council of *Exeter*, 1287 (Wilkins, *Conc.* II, 158) c 51.

[6] Cf. Dansey I, 233 ff.; II, 41 ff.

[7] First mentioned *circ.* 1170 (see Dansey I, 415), then at the collection of the first Saladin tithe, 1188.

[8] For details see Dansey I, 245 ff.

[9] Cf. *e.g.* council of *Oxford*, 1222 (Wilk. *Conc.* I, 585) c 20: . . . *statuimus, ut decani rurales nullam causam matrimonialem de caetero audire praesumant, sed et earum examinatio non nisi viris discretis committatur, quibus assidentibus, si commode fieri possit, postmodum sententia pronuncietur.* (Const. of Otho c 23 [1237], according to the gloss. of John of Actona p. 59, does not refer to rural deans.) On the displacement in course of the thirteenth century of the rural deans from the presidency in the rural chapters see § 58, notes 2, 3. Some of their powers were transferred to the churchwardens and *testes synodales*; so the management of vacant livings and the reporting of offences of parishioners to the higher ecclesiastical authorities.

that even before the reformation the office was in some places no longer filled up.

In the course of the reformation rural deans ceased completely to have their earlier importance. In the assessment list of 1535 they are only found occurring in a certain number of dioceses. Rural deans continued to be appointed in other places, but this frequently implied nothing more than the conferment of an honorary title. The first revolution also appears to have brought about the extinction, in some cases, of the office. Rural deans existed at the end of the seventeenth century in but few bishoprics,[10] and it was only in exceptional instances that the institution survived through the eighteenth century.[11] On the other hand, the local division into rural deaneries everywhere remained. Repeated attempts, begun almost at the reformation, to revive the office, produced in general no result, though in isolated cases they were successful.[12] Only with the beginning of the nineteenth century did the movement in favour of once more establishing rural deans grow so strong that in a large number of bishoprics the partly decayed, but mostly extinct institution was resuscitated by the bishops.[13] The development was promoted by the fact that in 6 & 7 *Gul. IV* (1836) c 77 power was given to issue orders in council, upon the represen-

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[10] Bishop Gardiner, *Advice to the Clergy of the Diocese of Lincoln*, 1697, in Dansey II, 471.

[11] So *e.g.* in the diocese of Exeter; in name, also in the diocese of Chester, where, from the beginning of the 17th century, the archdeacon of Chester and the commissary (equal to an archdeacon) of Richmond, who as such had no jurisdiction, were appointed rural deans at first of most, afterwards of all the deaneries of their districts. Dansey II, 389 ff., 368 ff.

[12] *Reformatio legum: Decanatus quilibet archipresbyterum rusticanum habeat, vel ab episcopo, vel ecclesiae ordinario praeficiendum. Munus erit annuum. . . .* Resolutions of the provincial synod of *London*, 1571 (Wilk. *Conc.* IV, 264): *. . . peracta visitatione, archidiaconus significabit episcopo, quos invenerit in quoque decanatu, ea doctrina, et judicio praeditos, ut digni sint, qui pro concione doceant populum, et praesint aliis. Ex illis episcopus potest delectum facere, quos velit esse decanos rurales.* It appears that the presbyterians contemplated the transformation of the rural chapter into a presbytery. Hence their proposal at the Hampton Court conference (1604) to revive the chapters (Wilkins, *Conc.* IV, 374). James, however, declined. Charles II in his 'Declaration concerning Ecclesiastical Affairs,' c 5 (Wilkins, *Conc.* IV, 362) was for meeting the wishes of the presbyterians. But parliament refused to introduce the projected reforms. (Cf. § 7, near note 66.) Discussions of the convocation in 1710 ff. led to no agreement between the two houses. One of the subjects proposed by the government for deliberation was: 'The establishing rural deans, where they are not, and rendering them more useful, where they are' (Wilkins IV, 638 ff.).—Shortly after 1666 the institution was revived in the diocese of Salisbury; but by the end of the seventeenth century appointments ceased to be made. Dansey II, 444. Revival of the nearly extinct office was attempted in the eighteenth century in the diocese of Gloucester by bishop Benson (1735–52), in that of Exeter by bishop Keppel (*circ.* 1770). Dansey II, 405, 390.

[13] As early as 1833 rural deans were again appointed in the sees of Canterbury, London, Winchester, Bangor, Bath and Wells, Bristol, Exeter, Gloucester, Lincoln, Llandaff, Oxford, Peterborough, St. Asaph, St. David's, Salisbury, and perhaps also in some others. See more in Dansey II, 345–483.

tation of the ecclesiastical commissioners, to make provision that in future every parish should be within a rural deanery, and every rural deanery within an archdeaconry.[14]

The official powers of the dean are at present, as a rule, to be measured by the general instructions given to him by the bishop when conferring the office.[15] The dean must solemnly promise 'to execute the said office according to such instructions to the best of his skill and power.'[16] He has accordingly not now in general any independent power to pronounce decisions;[17] but is restricted to reporting to higher ecclesiastical authorities the defects he discovers, or current matters connected with administration. It is prescribed that he must visit personally every church etc. in his district. In some dioceses he may, according to the discretion of his superiors, convene meetings of the clergy of his deanery; during the deliberations he acts as president.

In the earliest times rural deans were probably appointed by the bishop.[18] But from the thirteenth century in England, as elsewhere, the regulation[19] made by Innocent III prevailed, that they were to be nominated and dismissed by the bishop and the archdeacon jointly.[20] In some places, however, other modes of appointment grew up; instances occur, for example, of election by the clergy of the deanery.[21] Appointment was, as a rule, only for a definite time, mostly for one year, it being so arranged that every year a different parish priest of the deanery should fill the office.[22] In course of time many changes in the method of appointing took place in the various localities concerned. For the province of Canterbury the provincial council of London (1571) resolved that the archdeacon, after his yearly visitation, should propose suitable

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[14] Cf. also 37 & 38 *Vict.* (1874) c 63, in which 6 & 7 *Gul. IV* c 77 and 3 & 4 *Vict.* c 113 s 32 in reference to new boundaries, new foundations etc. of rural deaneries and archdeaconries are explained.

[15] The instruction of 1833 for the rural deans of Canterbury, and the commission now in use in Salisbury are printed as examples in app. XIII. For other forms see Dansey.

[16] Dansey I, 139. Cf. 28 & 29 *Vict.* (1865) c 122 s 9.

[17] Cf., however, the commission for Salisbury (printed in app. XIII) wherein the rural deans are empowered in connexion with their visitation to give certain directions independently.

[18] In proof of this many writers adduce the mention of a *decanus episcopi* in the *leges Ed. Conf.* Cf. on this point, note 2, above.—It was at a later time that archdeacons obtained a position of independence as against the bishop.

[19] Decretals of Gregory IX (*Liber Extra*) I, 23, c 7.

[20] John of Actona, gloss. to *Constit. Othonis* p. 10: *salva consuetudine locorum tam præfici debent decani tales quam etiam amoveri per episcopum et archidiaconum simul de jure.* So Lyndwood: . . . *communiter eorum receptio et amotio pertinent ad utrumque* . . .

[21] Details in Dansey I, 117 ff. Cf. also council of *Kilmore* (Ireland), 1638 (Wilkins, *Conc.* IV, 538) c 5.

[22] *Const. Otho* (1237) *de sigillis authenticis* in John of Actona p. 69: *illi qui temporale officium suscipiunt, puta, Decani Rurales,* . . . Lyndwood. *Provinciale* L. II tit. 1 p. 85, gloss. *omni anno: quolibet anno mutantur decani et fiunt novi.*

clergymen from among whom the bishop might nominate the rural dean.[23] As, however, a general revival of the office did not ensue in consequence of the synodal resolutions then passed, so also was their effect small in respect to the mode of appointment.

In modern times no universal rule for the appointment of rural deans exists; the practice varies in different dioceses and is partly determined by old custom. In most sees the bishop nominates, sometimes on the archdeacon's proposal; in other districts the archdeacon exercises under different forms a more considerable influence. Presentation to the bishop as a result of election by the clergy also occurs.[24] Appointment is, as a general rule, *durante episcopi beneplacito*; but nominations for a year are known as also for life.[25]

§ 44.

8. PARISH PRIESTS.[a]

Divine service was originally performed within the whole of an episcopal district by the bishop himself and other clergymen making circuits from the episcopal seat and returning thereto.[1] Gradually at various points in the see fixed stations for individual priests were established. This was due in most cases to grants of land from the king or other landowners for the building of a church, frequently also it was connected with the foundation of new monasteries. At the more important places the bishop left behind a 'mass-priest,'[2]

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[23] Cf. above, note 12.

[24] Details in Dansey I, 125 ff.

[25] Dansey I, 153.

[1] Proofs in Kemble, *The Saxons in England* Book II, c 9; Ed. 1876 II, 416 note 1.—Cf. Beda, *Hist. Eccl.* Book IV, c 27 § 344: . . . *Erat quippe moris eo tempore* (middle of 7th cent.) *populis Anglorum, ut, veniente in villam clerico vel presbytero, cuncti ad ejus imperium verbum audituri confluerent;* . . .

[2] 'Mass-priest' seems to be, for the most part, equivalent to 'priest'; the mass-priest is, in particular, also authorized to baptize. Compare *e.g. Edward and Guthrum* c 3 § 2. [The difference which for a time prevailed on the continent between the larger churches in which baptism might be performed and the smaller in which mass only might be read (Richter, *Kirchenrecht* § 41) is, so far as is apparent, not found in England as a difference in respect of the

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[a] Blunt, John Henry, *The Book of Church Law*, 7th Ed., London, 1884, Book V c 2 § 2.—Kennet, White, *Parochial Antiquities attempted in the History of Ambrosden, Burcester and other adjacent parts of the Counties of Oxford and Bucks*, Oxford, 1695 (with glossary), 2nd Edition (prepared with the aid of manuscript notes of the author), Oxford, 1818, 2 vols.—Kennet, White, *The Case of Impropriations and of Augmentations of Vicarages and other insufficient Cures, stated by History and Law from the first Usurpation of the Popes and Monks to Queen Anne's Bounty*, London, 1704.—Pegge, Samuel, *Of Parochial Vicarages, their Origin and Progress* (append. VII to his *Life of Grosseteste*, London, 1793).—Phillimore, *Eccles. Law* 262 ff.—Steer, John, *Parish Law, being a Digest of the Law relating to the Civil and Ecclesiastical Government of Parishes*, London, 1830, 5th Ed. (by W. H. Macnamara), London, 1887.—On the works of Degge and Stillingfleet see app. XIV, III.—On the older history of advowson in England and the mode of appointing parish priests in the 11th and 12th cents. see also Twiss, pp. ix ff. of Introduction to Bracton IV (*Rer. Brit. Scr.* No. 70).

at less significant ones often only deacons seem to have been employed. As the number of these churches scattered over the country grew, it became requisite to mark off the districts within which the several clergymen might officiate. According to the statement of a chronicler of the fifteenth century, the appointment of parish priests with a fixed seat and the delimitation of parochial districts was much encouraged by Theodore (668–90).[3] However that may be, the establishment of separate parishes became fully developed in the course of the eighth century.[4] At the same time

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place. (Cf., however, below, note 8.) The admissibility of different official acts was in England only dependent on the orders in which the holder of the benefice was.] In other cases a distinction is drawn between mass-priest and priest, according to which the former seems to occupy the higher position, though it is not plain in what the superiority consists. Of this tendency is *e.g.* the report of the council of *Clovesho*, 824 (Haddan and Stubbs III, 594): . . . *Statuta est . . . , ut Episcopus . . . cum juramento Dei servorum presbyterorum, diaconorum et plurimorum monachorum, sibi in propriam possessionem terram illam cum adjuratione adjurasset . . . Aet ðam aþe waes aet Westmynstre efen fiftig maessepreosta and X. diaconas, and ealre oþra preosta sixtig and hund teontig. Her sindon ðara maessepreosta naman ðe on þam aþe stodon and on waeron.* ("At the oath in Westminster were fifty mass-priests and ten deacons, and of all other priests one hundred and sixty. Here are the names of the mass-priests which stood and were at the oath.") There follow the names of 3 persons designated *abbas;* 47, *presbiter;* 6. *diaconus.*—Letter of Aelfric to bishop Wulfsin (the so-called *canones Aelfrici*, 992–1001, printed in Thorpe [*Record Commission*], *Ancient Laws etc.* 441 ff.) c 16 (of the deacon): . . . *Se sacerd þe bið wunigende butan diacone, se hafað þone naman and naefð þa þénunga.* ("The priest who lives without a deacon, he has the name, but not the services.") c 17: *Presbiter is maesse-preost* . . . ("Presbyter is mass-priest.")

[3] Thomas de Elmham, *Historia Monasterii S. Augustini Cantuariensis* (written about 1414; *Rer. Brit. Scr.* No. 8) 285: . . . *Theodorus . . . excitabat fidelium devotionem et voluntatem, in quarumlibet provinciarum civitatibus, necnon villis ecclesias fabricandi, parochias distinguendi assensus eisdem regios procurando, ut, si qui sufficientes essent, et ad Dei honorem pro voto haberent super proprium fundum ecclesias construere, earundem perpetuo patronatu gauderent . . .* —'Mere tradition or invention,' Stubbs, *Const. Hist.* I, 247, note 2 c 8 § 85.

On the way in which parishes followed the lines of civil divisions, cf. C. H. Pearson, *Historical Maps* 2nd Ed. London, 1870, pp. 55 ff. Against his views it is however to be observed that the civil 'tithings' probably had not in the Anglo-Saxon period the meaning of a local division (§ 43, note 2).

[4] Letter of Beda to archbishop Egbert of York (734; printed in Haddan and Stubbs III, 314) c 3: *necessarium satis est, ut plures tibi sacri operis adjutores adsciscas, presbyteros videlicet ordinando, atque instituendo doctores, qui in singulis viculis praedicando Dei verbo, et consecrandis mysteriis coelestibus, ac maxime peragendis sacri baptismatis officiis, ubi opportunitas ingruerit, insistant.* Councils of *Pincahala* and *Celchyth*, 787 (Haddan and Stubbs III, 449) c 1: . . . *omni anno in synodalibus conventibus ab Episcopis singularum ecclesiarum presbyteri . . . examinentur.* Council of *Celchyth*, 816 (Haddan and Stubbs III, 579) c 10: . . . *ut statim per singulas parrochias* [= diocese] *singulis quibusque ecclesiis, pulsato signo, omnis famulorum Dei coetus ad basilicam conveniat . . .* c 11: . . . *idipsum presbyteriis praecipimus, ut nullus majorem negotiam ad se desiderat, quam a proprio Episcopo concedatur, nisi in solo baptismo et aegritudine infirmorum tantum . . .*

the ministrations customarily performed hitherto by priests who made journeys from the episcopal seat, were discontinued.[5]

Soon after the formation of independent parishes it became usual, not, as before, to deliver over intact to the bishop all gifts collected in the diocese, but to retain a part for parochial objects, at first, as a rule, three-fourths (one-fourth each for the priest, for the poor and for the maintenance of the fabric and of divine service), afterwards all except a tax to be paid to the bishop.[6] [7] In the case of churches newly founded by land-owners on their own ground, if the church

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[5] According to Dansey, *Horae Decanicae* I, 76 the last mention of itinerant priests is at the council of *Clovesho*, 747 (Haddan and Stubbs III, 362) c 9: *Ut presbyteri per loca et regiones laicorum, quae sibi ab episcopis provinciae insinuata et iniuncta sunt, evangelicae atque apostolicae praedicationis officium in baptizando, et docendo, ac visitando . . . studeant explere, . . .* It is doubtful whether this passage is to be referred to priests who made circuits from the episcopal seat, or to such as were permanently assigned to a small district within the diocese and who then visited the various places within this district.

[6] The original arrangement in this respect in the English church is to be seen from the instruction of Gregory (601) in answer to the first question of Augustin (Haddan and Stubbs III, 18): . . . *Mos autem sedis apostolicae est, ordinatis Episcopis praecepta tradere, ut in omni stipendio quod accedit, quatuor debeant fieri portiones; una videlicet Episcopo et familiae propter hospitalitatem, atque susceptionem; alia clero; tertia pauperibus; quarta ecclesiis reparandis. Sed quia tua fraternitas monasterii regulis erudita, seorsum fieri non debet a clericis suis, in ecclesia Anglorum, quae auctore Deo nuper adhuc ad fidem adducta est, hanc debet conversationem instituere, quae initio nascentis ecclesiae fuit patribus nostris; in quibus nullus eorum ex his quae possidebant, aliquid suum esse dicebat, sed erant eis omnia communia. Si qui vero sunt clerici extra sacros ordines constituti, qui se continere non possunt, sortiri uxores debent et stipendia sua exterius accipere . . . Communi autem vita viventibus jam de faciendis portionibus, vel exhibenda hospitalitate, et adimplenda misericordia, nobis quid erit loquendum? Cum omne quod superest, in causis piis ac religiosis erogandum est; . . .*

From the time after the lapsing of the bishop's share cf. *e.g.* letter of Aelfric to bishop Wulfsin (the so-called *canones Aelfrici*, 992–1001, printed in Thorpe [*Record Commission*], *Ancient Laws etc.* 441 ff.) c 24: *þa halgan faederas gesetton eac þaet menn syllon heora teoþunga into Godes cyrcan. And gange se sacerd to, and daele hy on þreo, aenne dael to cyrc-bôte, and oðerne þearfum, þone þriddan þam Godes þeowum þe þaere cyrcan begymað.* ("The holy fathers appointed also that men pay their tithes into God's church. And let the priest go thither and divide them into three: one part for repair of the church, and the second for the poor, the third for God's servants who attend the church.") Similarly law of 1014, *Aethelred* VIII, 6: *And be teôðunge se cyning and his witan habbað gecoren and gecweden, ealswâ hit riht is, þaet þriddan dâel þâre teôðunge, þe tô circan gebyrige, gâ tô ciric-bôte, and oðer dâel þâm Godes þeôwum, þridde Godes þearfum and earman þeôwetlingan.* ("And respecting tithe; the king and his witan have chosen and decreed, as is just, that one third part of the tithe which belongs to the church go to the reparation of the church, and a second part to the servants of God; the third to God's poor and to needy ones in thraldom.") Compare also the triple division of the tax voted in the assembly of Haba, apparently an extraordinary tax, composed of the thanes' tithes and one penny from every plough of the 'hyremen.' [*Aethelred* VII c 1 § 2 and append. to council of Haba (in Schmid, *Ges. der Angels.*) §§ 2, 4, 5.]—According to Richter, *Kirchenrecht* § 308, the quadruple division of the gifts first appears in Italy (475); in France during the sixth century various customs prevailed; in Spain in the sixth century there pertained to the bishop one-third of the incomes of the churches; it was, however, to be applied, in the

had a burial place, one-third of the owner's tithe might be retained, whilst two-thirds was in any event to go to the old parish church.[8]

From tithes, church-scots and other current sources of income, as also from land and movables gradually accruing, there grew to be in every parish a body of property, which was administered by the parish priest. One-third of the fruits he might apply to his own use. The property passed to each succeeding holder of the office.[9] A parish priest in this independent position, entitled as against the outside world to dispose of the whole income of his benefice, was designated *rector* (*ecclesiae*) or *persona*.[10]

With the increased strength of monasticism in the eleventh and twelfth centuries, the custom of appropriations began in England as elsewhere.[11] Appropriation was the annexing of a benefice, upon various titles, by a monastery, a cathedral chapter or cathedral convent, or, in some cases, by other spiritual corporations, so that the monastery or chapter etc. now became the *rector*. The appropriating corporation acquired a permanent claim to the income of the benefice, and became the possessor of the land attaching thereto and of the other accumulated property. On the other hand, the corporation was bound to provide for the cure of souls in the appropriated parish. It did so by delegating for the purpose its monks or canons, or by appointing other clergymen, called without distinction *capellani*, *vicarii* or *curati*, and receiving a salary agreed. This salary was, as the now 'rector' was concerned to keep something for his own uses, considerably smaller than the average income of the rectory. Within three hundred years from the conquest more than a third, and among them the richest, of all the parishes of England, were appropriated.[12]

On the one side monasteries and chapters were striving—often supported by the pope—to obtain a position as independent of the

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first instance, to repair of fabric. On the division of the tithes see Richter § 309 *sub fin.*

[7] This tax (*cathedraticum* or *synodaticum*) is still in vogue in England. Phillimore, *Eccles. Law* 162. According to Richter, *Kirchenrecht* § 234, it first arose in Spain (mentioned, council of *Bracara*, 572).

[8] *Edgar* (959–75) II, c 2. Similarly *Knut* (1016–35) I, c 11 pr. and § 1.

[9] The succession was afterwards developed into an universal succession, the holder of the benefice becoming regarded as corporation sole (Stephen's *Comm.* Ed. 1890, III, 4). According to Bracton the parson holds *ratione ecclesiae*. Cf. also the distinctions in Bracton, Book IV, tract. 5 cc 1, 2 (IV, 366, 372, 374). On the successor's right of action against a third person in a particular new case it is laid down by 13 *Ed. I* (1285) *Stat. Westminster II* c 24: *Eodem modo sicut persona alicujus ecclesie recuperare potest communiam pasture per breve Nove disseisine, eodem modo decetero recuperet successor super disseisitorem vel ejus heredem per breve quod permittat, licet hujusmodi breve prius a Cancellaria non fuit concessum.* Cf. Bracton, Book IV, tract. 1 c 38 § 13 (III, 520) on the several cases in which the successor sues for possession on the ground of his predecessor's possession.

[10] The two designations also occur side by side in the books of canon law. See Richter, *Kirchenrecht* § 142, note 1.

[11] On the continent from the 13th cent. termed as a rule *incorporatio* or *unio*. Hinschius, *Kirchenrecht* II, 445.

[12] Kennet, *Impropriations* p. 25 after *Defence of Pluralities* p. 113.

bishops as possible; on the other side the bishops set themselves to prevent the undermining of the constitution of the church or to undo the mischief already caused. As a result of the struggle there arose two main kinds of appropriation, the essential difference between them lying in the extent to which the bishop's right of supervision over the appropriated parishes was restricted. These are the *appropriato quoad spiritualia et temporalia* or *unio mensae episcopali vel abbatiali*, and the *appropriatio quoad temporalia*.[13] In the former the religious house received the right to dispose freely of the benefice. It instituted, inducted, recalled, performed the duties of the church through its own members or through stipendiary clergy. Nevertheless, even in such parishes the supreme superintending powers of the bishop were not annulled. In the second, more limited kind of appropriation, the religious house acquired, it is true, the whole property and full income of the parish; but in respect of action upon the ecclesiastical affairs of the parish and, in particular, in respect of presentation to the cure of souls, it practically stood only in the relation of a patron. Accordingly it had the right to present a suitable person to the bishop; but the latter instituted the clerk, and caused him to be inducted, and it was to the bishop immediately and exclusively that the clerk admitted owed obedience.

The two positions of *vicar* and *perpetual curate* have, in course of time, developed from the two positions of those having cures of souls under the differing forms of appropriation, though the existence of a vicar or of a perpetual curate does not *necessarily* imply an earlier appropriation.

In the cases of less extensive appropriation, that *quoad temporalia*, the mere fact that the bishop made good his right of institution rendered the cure of souls a perpetual one. The monastery or chapter, simply presenting, could not by itself revoke the appointment; the bishop who had acquired or retained authority to put the clerk in office had also necessarily the sole power to pronounce sentence of deprivation, wherein he was bound by the rules which governed deprivation of rectors. The right of playing a part in filling such cures of souls enabled the bishops, further, to obtain recognition of the principle that the cure must be permanently endowed by the appropriator, and that to them belonged the right of determining the adequacy of the endowment and of varying it according to change of circumstances.[14] [15]

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[13] Side by side with these occurs in rare instance what was called *incorporatio plenissima* (in the decretals termed *incorporatio 'pleno jure'*; Hinschius II, 442, 453), in which episcopal jurisdiction over the parish was quite excluded.

[14] Of regulations which arose out of the struggle against appropriations important are the following: council of *London*, 1102, c 22; *Westminster*, 1127, c 9; under archbishop Richard (1173?) c 2; *London*, 1200, c 14; *Oxford*, 1222, cc 14-16; const. of Otho, 1237, c 10, of Othobon, 1268 cc 9, 22; the acts of parliament 15 *Ric. II* (1391) c 6, 4 *Hen. IV* (1402) c 12; concordat of Constance, 1418, arts. 3, 4 (Wilkins III, 391). These regulations have a double object in view: 1. To tolerate only the less extensive form of appropriation and so to obtain 'perpetual' ministers; 2. In cases of the less extensive form to bring about a permanent endowment of the cure and otherwise to raise the position of

It was to these ministers of *endowed* benefices in appropriated parishes that the designation 'vicars' was confined. The addition 'perpetual,' which also occurs, was generally dropped as being superfluous, inasmuch as non-perpetual 'vicars,' in the now limited sense of the term, did not exist.[16]

This position has been retained by vicars even to the present day. They are, accordingly, parish priests appointed for life, holding independently endowed benefices in parishes which were, as a rule, formerly appropriated. They do not draw all the income originally raised in the parish in virtue of ecclesiastical right, but only such part thereof as serves for the separate endowment of the vicarage. The rest of the church income, in so far as not in process of time alienated to other persons, belongs to the rector of the parish, who is not necessarily a spiritual person and who exercises in respect to the ecclesiastical administration of the vicarage the rights of a patron,[17] unless for some reason the right of patronage has been detached from the rectory and become vested in other persons.[18]

In the cases in which the more extensive form of appropriation, viz. that *quoad spiritualia et temporalia*, permanently held its ground, the development ascribed above to perpetually endowed cures did not take place. The ministrations were in part performed as before by members of the appropriating monastery or chapter; or, the benefice was indeed bestowed by the appropriator on some clerk, but the remuneration to be given was settled by special agreement. None the less, the payment to be made had

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the holder. The carrying out of the regulations, particularly in the former direction, was, however, often baffled owing to papal dispensations.

[15] As to how far the right to vary is still recognized see Phillimore, *Eccles. Law* 272, 288–291.

[16] *Vicarii perpetui* are mentioned as early as the council under archbishop Richard (1173? Wilkins I, 474). But it is doubtful whether vicars with a fixed income were here in question. The independent endowment of several *vicarii perpetui* is mentioned in a deed (1180–86) of bishop Hugo of Durham, whereby in founding a hospital he appropriated to it a number of parishes (printed in *Collections relating to Sherburn Hospital*, ed. G. Allan, 1771, pp. 43 ff.). The establishment on a large scale of perpetual vicarages did not take place until the first half of the 13th century. From the *Liber Antiquus de Ordinationibus Vicariorum tempore Hugonis Wells Lincolniensis Episcopi* (for the most part probably written before 1218, ed. A. Gibbons, Lincoln, 1888, with introduction by G. G. Perry) we see that the bishop (consecrated 1209) established some 300 perpetual vicarages. From his predecessor's time the establishment of a perpetual vicarage before 1200 is recorded, of another shortly after 1203. For an example, 20th July, 1212, see *Rotuli Litterarum Patentium*, ed. Hardy (*Record Commission*), 1835, p. 93; five examples in 1220 in *Annales de Dunstaplia* (*Rer. Brit. Scr.* No. 36) III, 59; a large number of other examples in Pegge, *l.c.* pp. 325 ff.—Cf. also 1 *Ed. VI* (1547) c 14 s 8 in which the creation of new vicarages from the confiscated property of religious foundations is contemplated.

[17] Cf., for example, the petition of the clergy in 1280 and 1300 (printed in § 60, note 154).—At the dissolution of the monasteries the rights exercised by them in both kinds of appropriation passed to the king. Cf. 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 21.

[18] Cf. Phillimore, *Eccles. Law* 333.

a tendency to become fixed by a usage at a definite rate. The holders of cures of this kind came by degrees to have the designation 'curate' confined to them. Approbation of such curates by the bishop was apparently before the reformation not, as a rule, required in England.[19] After the reformation it was, however, laid down that the curate needed the episcopal licence to officiate.[20] In so far as such co-operation of the bishop was requisite at appointment, so far also was his judgment decisive in questions of dismissal. The guarantee thus provided against arbitrary dismissal transformed these offices also into perpetual ones.

Thus perpetual curates have now the position of parish priests appointed for life, in parishes which were, as a rule,[21] formerly appropriated. They are 'nominated' by the patron, they do not require episcopal institution or induction, but are subject to the necessity of obtaining the bishop's licence. In principle the owners of the whole property of a benefice held by a perpetual curate, are held to be the successors of those persons as whose substitutes the curates originally officiated, commonly, then, the nominal 'rectors' of the parish. The successive perpetual curates, taken collectively, are not regarded as a corporation, which *is* the case in respect of rectors and vicars.

We have exhibited the usual position of rectors, vicars and perpetual curates. But there are many deviations of usage, and cases occur in which the holders of the benefices in part are likewise to be regarded as full parish priests, in part occupy a position at least resembling that of such priests:—

1. Sinecure rectors and their deputies.[22] The position of rectors without cure of souls and of their officiating deputies had arisen out of the relation of full parish priests to the assistants appointed by them with the consent of the bishop. In some particular cases it became usual permanently to relieve the rector for the time being of the personal discharge of his official duties. As time went on, the actual cure passed more and more exclusively to deputies. These deputies were likewise termed vicars or perpetual curates according as the benefice was once for all permanently endowed or not. Both cases occurred. 3 & 4 *Vict.* (1840) c 113 s 48 abolished at the next vacancy all ecclesiastical rectories without cure of souls

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[19] Gibson, *Codex* 819.—Cf. also John of Actona (shortly after 1332), gloss. to constitution of Othobon, *De Institutione Vicariorum* p. 24: *Quidam sunt Vicarii mercenarii, et sic Convicarii Rectorum, qui ad tempus assumuntur temporales ad placitum Rectorum, et sine licentia Episcopi* . . .

[20] Cf. canon 48 of 1604 (app. XII).

[21] The statement that the position has arisen from that of those with cure of soul in parishes appropriated *quoad spiritualia et temporalia* is subject to exceptions. The appointment of curates or the performance of the duties of a cure by monks was allowed instead of the appointment of perpetual and endowed vicars for various reasons, such as the poverty of the monastery or the near proximity of the church. See Gibson, *Codex* 819, who cites *Registr. Courtney*, 72 *b*, *Stafford*, 18 *b*, *Warham*, 356 *b*. Such circumstances also led to perpetual curacies on the dissolution of the monasteries.

[22] Cf. Gibson, *Codex* 719. Cf. also 3 *Geo. IV* (1822) c 72 s 14.

which were in the patronage of the crown or of any spiritual corporation, and where there was a vicar endowed or a perpetual curate; the act also empowered the ecclesiastical commissioners, where the patronage belonged to other persons or bodies corporate, to purchase the advowson of rectories without cure and on the next avoidance to suppress the same. Hence sinecure rectories are at present wholly or almost wholly extinct.

2. Titular vicars. 31 & 32 *Vict.* (1868) c 117 s 2 enacts that the incumbent of a parish, not being a rector, who is authorized to publish banns and to solemnize marriages, churchings and baptisms in his church, and who is entitled to take for his own sole use the fees arising from such offices, may bear, but only for the purpose of style and designation, the title of vicar, and his benefice may likewise be called vicarage.

3. Clergy of chapels of ease. Chapels of ease, so called as making attendance at church easier for the inhabitants, are not seldom founded, especially in those parts of large parishes which lie remote from the principal church. The unity of the parish is not in this way disturbed. For the founding of such a chapel the joint consent of the diocesan, the patron and the incumbent of the parish church was required. A separate minister was appointed to the chapel, who, as a rule, was called 'curate' and who was not presented to the bishop for institution, but only designated by the person appointing him as fit to hold the episcopal licence to officiate. In some cases the curacy has a permanent and independent endowment; but, for the most part, the holder of it is paid a salary by the incumbent of the mother church. To whom the right of conferring the curacy belongs is determined mainly by the agreements entered into at the foundation of the chapel or by immemorial custom. Whether, in case of doubt, it belongs to the incumbent of the mother church or to the founders has been disputed.[23]

4. Augmented curates. If the living of a clergyman which is not a rectory or a vicarage, and which is therefore unable to possess property independently, is augmented by the governors of Queen Anne's Bounty, it becomes a benefice, receives corporate rights and is reckoned, even if not hitherto such, as a perpetual curacy.[24] This

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[23] Phillimore, *Eccles. Law* 305, 306.

[24] 1 *Geo. I* st. 2 (1714) c 10 s 4: . . . *That all such churches, curacies, or chapels, which shall at any time hereafter be augmented by the governors of the bounty . . . , shall be, and are hereby declared and established to be, from the time of such augmentations, perpetual cures and benefices, and the ministers duly nominated and licensed thereunto, and their successors respectively, shall be, and be esteemed in law, bodies politick and corporate, and shall have perpetual succession . . .; and that the impropriators or patrons of any augmented churches or donatives, for the time being, and their heirs, and the rectors and vicars of the mother-churches whereto any such augmented curacy or chapel doth appertain . . . shall . . . pay and allow to the ministers officiating in any such augmented church and chapel respectively, such annual and other pensions, salaries, and allowances, which by antient custom, or otherwise, of right, and not of bounty, ought to be by them respect-*

is also the case, though the augmentation takes place not out of the funds of the bounty, but out of private benefactions, if a lasting agreement touching the patronage is entered into by the agency of the governors with the benefactor.[25] Peculiar is that the augmented posts, if not already perpetual curacies, become equivalent to such only in name, whilst, on the other hand, in respect of the cure, they do not become independent parishes, but the existing rights of the incumbent of the mother church continue unimpaired[26] until a separate district is assigned to the church or chapel.[27]

The term 'parish priest' (German *Pfarrer*) is not of frequent occurrence in documents. The meanings attached to the words 'rector,' 'vicar' and 'curate' will, in part, be seen by what has preceded; they are here brought together. For a proper understanding of English statutes and books of law, it is necessary to know the exact meaning of certain other names which are used as collective designations of certain special kinds of parish priests or which have some similar meaning. We give, then, the following conspectus:—

I. Rector.

1. The representative in law (layman or clerk, individual or corporation) of the earlier appropriator. He draws, wholly or in part, the income of the parish and exercises the rights of presentation or nomination. He does not officiate.
2. Sinecure rector. He must be a clerk and a single person (not a corporation). For the rest, he is on the same footing as 1. [Such offices are now, probably, all abolished.]
3. Officiating rector. He comes into his office by way of presentation and institution or collation; in rare cases (donatives) by the free gift of the patron without the co-operation of the bishop. Parish priests of newly founded parishes are entitled 'rectors' if "the whole of the Ecclesiastical Dues arising within the . . . Parish . . . , consisting of any Praedial or Rectorial Tithe . . ." are payable to them (19 & 20 *Vict.* c 104 s 26).

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ively paid and allowed, and which they might, by due course of law, before the making of this act, have been compelled to pay or allow to the respective ministers officiating there, and such other yearly sum or allowance as shall be agreed upon (if any shall be) between the said governors and such patron or impropriator, upon making the augmentation, and the same are and shall be hereby perfectly vested in the ministers officiating in such augmented church or chapel respectively, and their respective successors.

[25] 3 & 4 *Vict.* (1840) c 20 s 4: . . . *That every Cure touching the Patronage or Right of Nomination to which any such Agreement as aforesaid with any Benefactor or Benefactors shall be made for the Benefit of such Benefactor or Benefactors . . . , though no Appropriation whatsoever to the said Cure for the Augmentation thereof shall be made by the said Governors out of the Funds at their Disposal, shall . . . be deemed and considered in Law, in all respects, and to all Intents and Purposes whatsoever, as a Cure augmented by the said Governors, . . .*

[26] 1 *Geo. I* st. 2 (1714) c 10 s 5: *Provided always, That no such rector or vicar of such mother-church, or any other ecclesiastical person . . . having cure of souls, within the parish or place where such augmented church or chapel shall be situate . . . , shall hereby be divested or discharged from the same; but the cure of souls, with all other parochial rights and duties (such augmentation and allowances to the augmented church or chapel, as aforesaid, only excepted), shall hereafter be and remain in the same state, plight and manner as before the making of this act . . .*

[27] The position of an *augmented curate* after the assignment to him of a *district chapelry* is regulated by 2 & 3 *Vict.* (1839) c 49 s 2.

II. Vicar.

A. In the middle ages used without clearly defined meaning for every assistant or deputy minister of a cure of souls.

B. In the present employment of the word:—

1. Titular vicar according to 31 & 32 *Vict.* c 117.
2. The parish priest in possession of an independently endowed living in parishes where there is or has been a sinecure rector.
3. The parish priest in possession of an independently endowed living in parishes which formerly were appropriated. He comes into office by way of presentation and institution or collation; in rare cases (donatives) by the free gift of the patron without the co-operation of the bishop.

III. Curate (not including the general, non-technical sense still found in the rubrics of the prayer-book[28]).

1. The permanently appointed parish priest in a parish formerly appropriated *quoad spiritualia et temporalia* or sometimes only *quoad temporalia*.[29] The benefice is not independently endowed; the succession of parish priests has no corporate rights. The mode of filling the post is by nomination of the appropriator and licence by the bishop.
2. The parish priest of a new parish separated from an old under 6 & 7 *Vict.* c 37 or 19 & 20 *Vict.* c 104, if in the new division a church or chapel has been consecrated (before that takes place he is styled the 'Minister of the District of ——,' 6 & 7 *Vict.* c 37 s 12), provided that all the tithes raised in the new division do not go to him (if they do he is 'rector,' 19 & 20 *Vict.* c 104 s 26). The benefice has a fixed endowment. Until a new arrangement is arrived at, alternately the crown nominates a spiritual person to be licensed by the bishop, and the bishop appoints by giving a licence (7 & 8 *Vict.* c 94 ss 1, 2). The right of patronage and nomination may be vested in those who contribute largely to the endowment of the new benefice or the building of the new church (6 & 7 *Vict.* c 37 s 20, 19 & 20 *Vict.* c 104 s 16).
3. The parish priest in possession of a living without corporative rights in parishes wherein there is or has been a sinecure rector. Maintenance of parish priest and filling of post as in 1.
4. The clerk of a chapel of ease. He, for the most part, draws a stipend from the incumbent of the mother church; sometimes however, there is an independent endowment and corporative rights belong to the office. Filling of post as in 1. Such a curate is not a parish priest with an independent parish.
5. The parish priest in such a position as is indicated in 1 or 3, or a clerk without *jus parochiale*, but in either case there is a fixed endowment and corporative rights belong to the office. ('Augmented curate.')
6. The parish priest of an independent parish or the independent clerk of a subordinate church, independently endowed or not,[30] having corporative rights or not, filled by the free gift of the patron (donor) without the co-operation of the bishop. ('Donee;' cf. below V.)
7. The deputy or assistant of a parish priest.[31] Clergymen in the positions of 1, 2, 3, 5 and 6 are as a rule—the usage of language varies somewhat—all grouped together as 'perpetual curates'; 7 is a 'stipendiary curate'; 4 the 'curate of a chapel of ease.' But the clerk of a chapel of ease is also sometimes called a 'perpetual curate.'

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[28] See on this point Phillimore 299. This general sense is very common in the prayer-book; so several times in the rubrics to the communion service and the form for the baptism of infants. But the restricted sense is also found *e.g.* in the rubrics at the *end* of the communion service. *Curatus* in the general meaning of one having the cure of souls frequently occurs until towards the end of the middle ages; cf. *e.g. Clementinae* III, 7 c 2.

[29] Cf. above, note 21.

[30] According to Phillimore 277, a donative is always endowed.

[31] On this position cf. § 45.

A 'perpetual curate' in his normal position (thus 1 in particular) is in fact 'stipendiary,' that is appointed with a fixed income, not the owner of a benefice. Thus there is no strict opposition between the two *expressions* 'perpetual curate' and 'stipendiary curate.' In reality the curates now called perpetual were, before the reformation, only subordinate clerks appointed temporarily, and in the same position as the present 'stipendiary curates.'

IV. Parson.

The *persona* of canon law.[32] Originally equivalent in meaning to 'rector.' After non-officiating rectors had sprung up, it in so far obtained a more limited meaning that it was only applied to a rector who was a spiritual person;[33] but in every-day language *parson* is used in a wider sense to denote every kind of parish priest and indeed every kind of clergyman, whether in an official position or not.

V. Donee.

A donee is one who receives an ecclesiastical office by perfectly free gift of the patron without any co-operation of the high ecclesiastical authorities. If the office to be given is parochial, then the person appointed is called, as a rule, 'curate,' but sometimes 'vicar' or 'rector.'[34] This free granting is of rare occurrence; but it is known in case of other ecclesiastical offices besides parochial. Nevertheless the term 'donee' is chiefly confined to those who hold in this way inferior offices.

VI. Incumbent.

The term is now used of the occupant of a benefice. But 'benefice' is itself of uncertain meaning. On the one hand, only an inferior benefice, not a chapter benefice or that of a prelate, is commonly implied.[35] On the other, not every permanent post for the inferior clergy is regarded as a benefice, but only such posts as have a permanent, independent endowment and corporative rights. Thus perpetual curacies not augmented are not accounted benefices.[36] But this last limitation is not always observed. A large number of acts expressly define what in each of them is to be understood by a benefice; and their definitions vary. For the most part, a perpetual curacy is designated as included; frequently also, along with rectories, vicarages and perpetual curacies, are classed donatives, to be interpreted then as *inferior* posts bestowed by free gift. The variety of meaning in the statutes occasions variety of usage in the writers; and as 'benefice' changes its signification so does 'incumbent,' the holder of a benefice. In its wider sense, embracing perpetual curates, 'incumbent' is a substitute, though not an exact one, for the German *Pfarrer*, and has sometimes been so used in this book; similarly *Pfarrstelle* has occasionally been expressed by benefice.[37]

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[32] Richter, *Kirchenrecht* § 142, note 1.

[33] Cf., however, Godolphin 186: parson is applied most correctly to the rector of a benefice where there is an endowed vicar.' According to Blackstone, 'a parson is one that hath full possession of all the rights of a parochial church.'

[34] Phillimore, *l.c.* 276. Here again historical reasons have in part given rise to the distinctions.

[35] In the language of the canons *beneficia minora* includes canonries as well as parochial benefices. Hinschius, *Kirchenrecht* II, 370 § 100.

[36] The incumbent of a benefice filled by a perpetual curate is, if the narrower sense of the term is preserved, the non-officiating rector of the benefice.

[37] *The Public Worship Regulation Act* (37 & 38 *Vict.* c 85) has a wide use of 'incumbent.' s 6 defines the term to mean 'the person or persons in holy orders legally responsible for the due performance of divine service in any church, or of the order for the burial of the dead in any burial ground,' not only perpetual curates but also dean and canons being thus included. Cf. also s 17, and the term 'incumbent of the diocese' used of the bishop in 3 & 4 *Gul. IV* c 85 s 89.

VII. Priest.

The word properly signifies a person in priest's orders and contains no reference to appointment to any particular ecclesiastical office. But the priest being often a parish priest, the former term is often used where the latter is meant; similarly, the person officiating, whether in priest's or deacon's orders, is frequently called priest, especially in the prayer-book.[38]

VIII. Minister.

This word signifies any person conducting divine service, without regard to orders or to office. But it is also used, though apparently only in older documents, such as the canons of 1604, as equivalent to 'priest,' 'minister' and 'deacon' being thus opposed. Yet in the same canons minister, in other places, embraces priest and deacon, and can only be understood quite generally in the sense of clergyman, clerk. In 33 & 34 *Vict.* c 91 'minister' signifies 'priest and deacon.'—By 6 & 7 *Vict.* c 37 s 12 the clergyman of a new 'Separate District for Spiritual Purposes' which has not yet been raised to a parish is entitled 'minister'; the post has a fixed endowment and corporative rights; appointment and deprivation are as in the case of a perpetual curate.

The three kinds of parish priests designated 'rector,' 'vicar' and 'perpetual curate' are appointed for life and entitled to perform the same ecclesiastical functions. The *essential* difference of the three concerns the domain of the law of property.

The parish priest has to hold divine service in the church of his parish, and has, within the limits imposed by law, full freedom in ordering it.[39] He had also until lately the sole right of conducting burials in the churchyard; but 43 & 44 *Vict.* c 41, the *Burial Laws Amendment Act*, allowed private persons, after notice given, to conduct burials, to the exclusion of the parish priest.

The parish priest appoints, subject to episcopal approbation, his representatives and assistant curates; if the appointment is not made within the prescribed time, the bishop appoints independently.[40] The rule is the same, for the most part, in respect to curates of chapels of ease; but the deed of foundation is therein determinative. Whether in the absence of such determination by deed the right of nomination falls to the founder or to the incumbent is a moot point. Lecturers are generally chosen by the vestry, not nominated by the parish priest; but here again the deed by which the lectureship was established is determinative.[41] The parochial readers of modern times are appointed by the parish priest, subject to the approbation of the bishop.[42] Parish clerks are appointed, in so far as recognized usage does not run counter to such appointment, as in some cases it does, by the parish priest independently. Only when they are spiritual persons do they need the approbation of the bishop; such approbation is, however, as a rule sought even when lay clerks are concerned.[43] In many cases the parish priest also appoints the rest of the lower officials or takes part in their appointment.[44] According to the canons of 1604 the minister and the parishioners were to choose the churchwardens jointly;

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[38] Cf. Phillimore, *Eccles. Law* 133.
[39] Blunt, *l.c.* p. 329.
[40] Cf. § 45.
[41] Cf. § 53.
[42] Cf. § 46, note 6.
[43] Cf. § 49, notes 4 and 5.
[44] Cf. §§ 50–52.

if they could not agree, then the minister was to choose one and the parishioners another. The latter has remained in most places the usual mode of appointment.[45]

Whether the parish priest has the right *ex officio* (that is to say, without being elected by the parishioners present) to be chairman of the vestry is disputed.[46]

Rectors and vicars are entitled to assist in electing proctors to convocation; for the most part, perpetual curates seem also allowed to vote.[47]

Before rector or vicar obtains institution or collation, or a perpetual curate receives a licence to officiate, he must declare his assent to the thirty-nine articles, to the book of common prayer and of ordering of bishops, priests and deacons; furthermore, he must declare that he has not procured his new office by any simoniacal practice and must take the oaths of allegiance to the king and canonical obedience to the bishop.[48]

9. REPRESENTATIVES AND ASSISTANTS OF PARISH PRIESTS.

§ 45.

A. STIPENDIARY CURATES.[a]

The older rules which determined the position of assistant clergy of this kind are found in the constitutions of archbishops Edmund, Islip and Sudbury, in the canons of 1604, in archbishop Wake's instructions and in the (now repealed) acts, 12 *Ann.* st. 2 c 12, 36 *Geo. III* c 83, 53 *Geo. III* c 149 and 57 *Geo. III* c 99.[1]

The legal status of the curate is now regulated almost entirely by 1 & 2 *Vict.* (1838) c 106,[2] as supplemented and amended by 48 & 49 *Vict.* (1885) c 54.[3] These enactments contain, with many limitations in matters of detail, the following main provisions:—

1. Non-residence of incumbent. The holder of a benefice who is non-resident and does not, with the consent of the bishop, perform the ecclesiastical duties of that benefice from his residence outside the parish, must provide a curate to represent him.[4] Where the

[45] Cf. § 48, notes 6 ff.

[46] The affirmative is maintained by Blunt, *Book of Church Law* 7th Ed. p. 300, Phillimore, *Eccl. Law* 1877 f.; the negative, at some length by Toulmin Smith, *The Parish* 2nd Ed. pp. 291 f., 294 ff.

[47] Cf. § 55, note 8.

[48] 28 & 29 *Vict.* (1865) c 122 *Clerical Subscription Act;* 31 & 32 *Vict.* (1868) c 72. Can. 36 of $\frac{1604}{1865}$ (append. XII).

[1] Phillimore, *Eccles. Law* 562.

[2] *An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy.*

[3] *Pluralities Acts Amendment Act.*

[4] 1 & 2 *Vict.* c 106 s 75.

[a] Blunt, *Book of Church Law* Book III cap. 2.—Phillimore, *Ecclesiastical Law* 560 ff.

population of the benefice exceeds two thousand persons, or where there are in it two churches more than a mile distant from each other, the bishop may require that two or more curates be nominated.[5]

2. Benefices with large population or with several churches. Whenever the annual value of a benefice exceeds five hundred pounds and the population amounts to three thousand persons, or when there is in the benefice a second church or chapel with a hamlet or district containing four hundred persons, the bishop may require the holder of the benefice, though resident and himself performing the duties, to nominate a person as assistant curate.[6]

3. Inadequate performance of official duties. If the bishop has reason to suppose that the holder of a benefice does not satisfactorily perform his ecclesiastical duties, he may direct an inquiry to be held by commissioners specified.[7] If this inquiry justifies the supposition, the bishop may call on the holder of a benefice to nominate a curate.[8]

4. Sequestration of benefice. In all cases of sequestration (except sequestration for the purpose of providing a house of residence), if the incumbent shall not perform the duties of the benefice, the bishop shall appoint and license a curate. If the benefice has a population of more than two thousand persons or has more than one church, the bishop may appoint several curates.[9]

In cases 1, 2 and 3, the holder of the benefice nominates a fit and proper person, and the bishop gives the nominated person his licence to officiate as curate. Should the holder of the benefice neglect to nominate a suitable person within a specified time, then the bishop independently may appoint and license.

The bishop may in all cases and at any time revoke the licence

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[5] (1 & 2 *Vict.* c 106 s 86); 48 & 49 *Vict.* c 54 s 9.

[6] 48 & 49 *Vict.* c 54 s 13; by this 1 & 2 *Vict.* c 106 s 78 is repealed.

[7] The constitution of the commission of inquiry was originally fixed by 1 & 2 *Vict.* c 106 s 77; it is now determined by 48 & 49 *Vict.* ss 3–5. The members are: 1, the archdeacon or rural dean of the district in which the benefice is; 2, a canon residentiary, prebendary or honorary of the cathedral church, to be elected triennially by the chapter; 3, a beneficed clergyman of the archdeaconry, elected triennially by the beneficed clergy of the archdeaconry; 4, a lay justice of the peace for the county, nominated on the requisition of the bishop by the person who presided at the last quarter sessions or, if there be no such person, by the lord lieutenant of the county; 5, at the wish of the incumbent concerned, either an incumbent of a benefice within the diocese, or a magistrate in the commission of the peace.

[8] 1 & 2 *Vict.* c 106 s 77.—Special provisions are found in ss 103 ff. for the case that in Welsh sees a curate is required owing to the incumbent's insufficient knowledge of Welsh.

[9] 1 & 2 *Vict.* c 106 s 99. Sequestration (in most cases identical with *Zwangsverwaltung* [compulsory administration]) takes place on bankruptcy of incumbent; as a means of obtaining payment of a debt; as an ecclesiastical punishment; during vacancy. See more in Phillimore 1377 ff. For some cases of sequestration 34 & 35 *Vict.* (1871) c 45 *Sequestration Act* contains supplementary provisions.

to officiate; he must, however, first hear the curate; appeal to the archbishop against the revocation is allowed.[10] A new holder of the benefice may give independently six weeks' notice to the curate in charge, the notice to be given within six months after the holder's admission; otherwise, any incumbent may give six months' notice to the curate, the bishop's permission having first been signified in writing.[11] No curate may quit any curacy to which he has been licensed without three months' notice to the incumbent and the bishop, unless with the consent of the bishop to be signified in writing under his hand.[12]

The curate is always to receive a fixed salary, the amount of which has to be entered in the bishop's licence and which has to be paid by the holder of the benefice out of the income of the same or by the sequestrator.[13] If the curate be appointed owing to the non-residence of the incumbent or to sequestration, the act contains provisions as to maximum and minimum salary, payable according to the number of curates, population of benefice and income thereof.[14] In other cases the stipend to be granted is a matter of agreement between the holder of the benefice and the curate.

The curate who seeks a licence must take the oath of obedience to the bishop and hand in a 'stipendiary curate's declaration,' wherein the incumbent undertakes to pay the stipend and the curate expresses his *bonâ fide* intention to receive the whole of it. When the latter has received his licence, he must further subscribe a declaration of assent to the thirty-nine articles, to the book of common prayer and of the ordering of priests and deacons.[15]

§ 46.

B. READERS.[a]

To fill this office[1] the obtaining of orders is not necessary. A reader is, as a rule, a layman; he is appointed to fill, in greater or less degree, the place of a clergyman in the performance of acts of divine service.

At the time of the reformation readers were appointed to churches or chapels where, owing to the smallness of the income or some other reason, clergymen could not be found to take upon them the

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[10] 1 & 2 *Vict.* c 106 s 98. The language of the act left it doubtful whether the admissibility of revocation was only in the case of curates appointed owing to non-residence; it is now decided to hold good in all cases. For more on this point see Phillimore 563, 574, Introduction (*Addenda*) p. lxx.

[11] 1 & 2 *Vict.* c 106 ss 95, 96.

[12] 1 & 2 *Vict.* c 106 s 97.

[13] 1 & 2 *Vict.* c 106, ss 83, 100.

[14] 1 & 2 *Vict.* c 106 ss 85 ff., 99.

[15] 28 & 29 *Vict.* (1865) c 122 *Clerical Subscription Act.* ss 3 and 6 require the *stipendiary curate's declaration*, s 8 the *declaration of assent*, s 12 leaves the necessity of the oath of obedience untouched.

[1] According to Phillimore, *Eccles. Law* 590, the office is historically connected with that of *lector*, the lowest but one of the orders in the Roman catholic church.

[a] Phillimore, *Ecclesiastical Law* 590 ff.

cure. The position of these readers was regulated by a resolution of the bishops (dating, it would seem, from 1563; perhaps only in confirmation of an order of 1559). According thereto the reader is not to preach and not to administer the sacraments, but to read that which is fixed by public authority, to bury the dead and to purify women after their childbirth. He is also bound to give place as soon as the circumstances allow a clergyman to be appointed.[2] By degrees it was found feasible everywhere to occupy even the poorer parishes with clergymen, and in consequence the office of reader, in the sense in which it had been conferred at the time of the reformation, became almost wholly extinct.

Only in recent times was the office revived, and readers have since then been appointed in considerable numbers,[3] not, however,

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[2] *Injunctions to be confessed and subscribed by them that shall be admitted readers* (printed in Strype, *Annals* Ed. 1824, I, 514, and with the date 1561 in Wilkins IV, 225; also after Wilkins in Cardwell, *Doc. Ann.* I, 268, signed by both archbishops and nine bishops. The more important articles run:—

Inprimis, I shall not preache or interprete, but only read that, which is appointed by publick authoritie.

I shall not minister the sacraments, nor other publick rites of the church, but burie the dead, and purifie women after their childbirthe.

I shall give place upon convenient warning, so thought by the ordinarie, if any learned minister shall be placed there, at the sute of the patrone of the parishe.

I shall not read, but in poorer parishes destitute of incumbents, excepte in the tyme of sickness, or for other good considerations to be allowed by the ordinary.

[3] Statistics in the *Church Year-Book*, 1891, p. 101 show that in all the bishoprics of England taken together there were in 1890 some 1500 readers. On the relations in the several dioceses down to the year 1884, see committee report No. 161, pp. 6 ff. in appendix to *Chronicle of Convocation of Canterbury*, 1884. According thereto the readers were generally unpaid, but sometimes paid.—The main lines on which the office was to be restored were traced at a meeting of archbishops and bishops at Lambeth. Perry, *Hist. of Engl. Ch.* III, 539 c 33 § 7. Phillimore, *l.c.* 592.—Cf. the concurrent resolutions (not binding owing to non-observance of submission act) of the upper and lower house of Canterbury, 16th May, 1884 (*Chron. of Conv. Cant.* 1884, *Summary* p. xxvii):—

1. *That no layman be admitted to the office of a Reader who has not been confirmed, and is not a communicant in the Church of England, and that the Bishop should satisfy himself of his personal fitness, knowledge of Scripture, and soundness in the Faith. That the Reader should also be required to sign a Declaration expressive of his acceptance of the doctrine of the Church of England as contained in the Book of Common Prayer and of the Ordering of Bishops, Priests, and Deacons, and of obedience to the Incumbent and the other properly constituted authorities, subject always to the control of the Bishop of the diocese.*
2. *That in unconsecrated places the Reader may expound the Holy Scriptures, may give Addresses, may read such parts of the Morning and Evening Prayer and use such other Services as may have been approved by the Bishop; and generally act under the Incumbent in visiting the sick and in other duties.*
3. *That in all cases the Reader shall hold the licence of the Bishop of the diocese and shall be admitted to his office by the delivery of a copy of the New Testament to him by the Bishop.*
4. *That this House recommends that steps should be taken in each diocese to bring the subject of Lay-Readers before the clergy and laity of the Church in such a manner as may approve itself to the Bishop of the diocese.*

as before, in substitution for parochial ministers, but to assist them and to perform special official duties under their guidance.

A distinction is now drawn between diocesan readers and parochial readers.[4] The former are less confined to officiation in a particular parish than the latter.[5]

The form of appointing a parochial reader is as follows: the vicar, rector or other parish priest nominates a suitable person to the bishop, the latter approves the appointment and grants his licence,[6] which holds good until revoked or until a new parish priest is appointed. In the second case a renewal may be given upon application.

The extent and character of the ecclesiastical duties of the reader are determined by the commission given him by bishop and parish priest; the chief are to read passages from the Scriptures or from the book of common prayer and such edifying homilies or discourses as the parish priest may think fit, and to read and explain the Bible to the aged, sick etc.; power may also be granted him to expound in public.[7]

The ecclesiastical authorities require that the reader should, before his admission, subscribe a declaration of assent to the thirty-

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[4] The *Church Year-Book*, 1891, p. 95 contains rules for both kinds of readers in the diocese of London.

[5] According to the rules for the diocese of London, those who wish to become *diocesan readers* are, at the discretion of the 'Readers' Board for the Dioceses,' presented to the bishop. The latter gives them (after optional examination) a licence for a given parish, such licence being subject to revocation; they may, however, upon occasion officiate in other parishes of the diocese with the consent of the incumbent in question.

[6] The bishop may make his approval depend on an examination in belief and Scripture knowledge, held by himself or his chaplain.

[7] See the form for the admission of readers as agreed by the bishops (printed in Phillimore 592):—

Christopher, by divine permission, Bishop of Lincoln, to our well-beloved and approved in Christ, A.B., greeting. We do by these presents grant unto you our commission to execute the office of a reader in the parish of C., within our diocese and jurisdiction, on the nomination of the reverend D.E., rector (or vicar) of the said parish; and we do hereby authorize you to read the Holy Scriptures, and to explain the same to the aged, sick, and such other persons in the said parish, as the incumbent thereof shall direct; (to read the appointed lessons in the parish church, and also) to read publicly in (the hamlet of F.) (or in the school room or other place approved by us) such portions of the morning or evening service in the Book of Common Prayer as we may appoint, and after such service (to expound some portion of Holy Scripture to those assembled, or) to read such godly homily or discourse as by the incumbent may be judged most suitable and edifying to their immortal souls. And we do hereby notify and declare that this our commission shall remain valid and have full force and authority until either it shall be revoked by us or our successors, or a fresh institution to the benefice shall have been made and completed, at and after which last-mentioned time it shall be competent for an application to be made to us or our successors for a renewal and continuance of this our present commission and authority. And so we commend you to Almighty God, whose blessing and favour we humbly pray may rest upon you and your work. Given under our hand and seal this . . . day of . . . etc. Cf. also resolutions of 16th May, 1884, 2 (above, note 3).

nine articles and to the book of common prayer and of the ordaining of priests and deacons. If he is empowered to preach, such subscription is requisite according to law.[8] Admission to office is through the bishop by delivery of a Bible, not by imposition of hands.[9] The observance of this form, however, appears to be unessential from a legal point of view.

In several dioceses lay helpers' associations have been formed. These are voluntary unions whose members place themselves at the service of the parish priests for ecclesiastical and beneficent purposes.[10]

§ 47.

C. DEACONESSES' INSTITUTIONS, SISTERHOODS, BROTHERHOODS.

Since the middle of the nineteenth century various deaconesses institutions and sisterhoods[1] have been formed, as also, somewhat later, brotherhoods. In 1891 the convocation of Canterbury laid down certain forms—the resolutions passed in one case by both houses, in the other by the upper only are not binding owing to non-observance of the submission act—to regulate the constitution of these associations and their place in the organization of the church.[2]

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[8] Canon 36 of 1865 (app. XII). Cf. resolutions of 16th May, 1884, 1 (above, note 3).—28 & 29 *Vict.* (1865) c 122 *Clerical Subscription Act* relates to preachers; it does not expressly name readers.

[9] This usage rests on the agreement of the bishops and on the resolutions of 16th May, 1884, 3 (above, note 3). On the practice as to the ordinary *lectors* in the early centuries of the Christian era see Phillimore 590.

[10] A list of lay helpers' associations will be found in the *Church Year-Book*, 1894, pp. 91 ff.

[1] On the origin of such bodies (from 1847 onwards) see Perry, *Hist. of Engl. Ch.* III, 270 c 14 § 12. For a conspectus of the sisterhoods existing in 1892 and of the deaconesses' institutions (diocesan organizations) see *Church Year-Book*, 1893, pp. 132 ff., pp. 143 ff.

[2] *A.* Upper and lower house of convocation agreed (1891) in the following—not binding—resolution as to brotherhoods (*Chronicle of Conv. Cant.* 1891, *Summary* p. xvi):—

1. *That . . . the time has come when the Church can, with advantage, avail herself of the voluntary self-devotion of Brotherhoods, both clerical and lay, the members of which are willing to labour in the service of the Church without appealing for funds or any form of public support.*
2. *That a wide elasticity is desirable as to the rules and system of such Brotherhoods as may be formed in the several dioceses.*
3. *That such Brotherhoods should work in strict subordination to the authority of the Bishop of each diocese in which they are established or employed, and only on the invitation and under the sanction of the Incumbent or Curate-in-Charge of the parish.*
4. *That those who enter a Brotherhood should be permitted, after an adequate term of probation, and being not less than thirty years of age, to undertake lifelong engagements to the life and work of the com-*

The activity of the deaconesses is intended to be the same as that

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munity, provided that such engagements be subject, on cause shown, to release by the Bishop of the diocese in which the Brotherhood is established.

5. *That the statutes of the community should be sanctioned by the Bishop under his hand, and not be changed without his approval signified in like manner.*
6. *In every body of Statutes it is desirable that provision should be made for the exclusion of unworthy or inefficient members by the Brotherhood with the assent of the Bishop.*

B. With regard to deaconesses' institutions and sisterhoods the resolution (not binding) of the upper house in 1891 was as follows (*Chron. of Conv. Cant.* 1891, *Summary* p. iii):—

That this House, recognising the value of Sisterhoods and Deaconesses and the importance of their work, considers that the Church ought definitely to extend to them her care and guidance.

I. Sisterhoods.

1. *That those who enter a Sisterhood should be permitted, after an adequate term of probation, and being not less than thirty years of age, to undertake life-long engagements to the life and work of the community, provided that such engagements be subject, on cause shown, to release by the Bishop of the diocese in which the Sisterhood is established.*
2. *That the form of such engagements should be a promise made at the time of admission, before the Bishop or his commissary.*
3. *That the statutes of the community should be sanctioned by the Bishop under his hand, and not be changed without his approval signified in like manner.*
4. *That no statutes should contain any provision which would interfere with the freedom of any individual Sister to dispose of her property as she thinks fit.*
5. *That no branch house of a Sisterhood should be established, or any branch work undertaken in any diocese, without the written consent of the Bishop of such diocese.*
6. *That no work external to the community should be undertaken by the Sisters in any parish without the written consent of the Incumbent or Curate-in-Charge of such parish, subject, if that be refused, to an appeal to the Bishop.*

II. Deaconesses.

1. *That Deaconesses having, according to the best authorities, formed an order of ministry in the early Church, and having proved their efficiency in the Anglican Church, it is desirable to encourage the formation of Deaconesses' Institutions, and the work of Deaconesses in our dioceses and parishes.*
2. *That a Deaconess should be admitted in solemn form by the Bishop, with Benediction by laying on of hands.*
3. *That there should be an adequate term of preparation and probation.*
4. *That a Deaconess so admitted may be released from her obligations by the Bishop of the diocese in which she was admitted, if he think fit, on cause shown.*
5. *That no Deaconess should be admitted to serve in any parish without licence from the Bishop of the diocese given at the request of the Incumbent or Curate-in-Charge.*
6. *That the dress of a Deaconess should be simple, but distinctive.*
7. *That a Deaconess should not pass from one diocese to another without the written permission of both Bishops.*
8. *That special care should be taken to provide for every Deaconess sufficient time and opportunity for the strengthening of her own spiritual life.*

of deacons in early Christian times, except that they are not to assist in celebrating divine worship. They devote themselves especially to the instruction of poor children and the tending of the sick. According to the resolutions quoted below, admission of deaconesses to office is to be by the bishop with benediction by laying on of hands. Before admission there is to be a period of probation. A deaconess may be released from her obligations by the bishop who admitted her. She shall exercise her office in a single parish under licence from the bishop, given at the request of the parish priest; in order to pass from one diocese to another, the permission of both bishops is required.

The sisterhoods and brotherhoods likewise devote themselves, in particular, to works of charity. The endeavour recently has been to give these associations more and more of a monastic character or at least the character of the Roman catholic 'congregations.' The resolutions would seem to sanction such endeavour. By them it is to be permissible for the brethren or the sisters, after the lapse of a due period of probation and after the attainment of thirty years of age, to undertake lifelong engagements from which they can only be freed by the bishop at his discretion.[3] The individual sisters are to be allowed to dispose of their property as they please. Sisterhoods and brotherhoods are to work in the several dioceses only by consent of the bishops and in subordination to them. To work in the parish outside of their own communities the approval of the parish priest is needed, appeal to the bishop being, however, open if that approval is refused; brotherhoods must be invited by the parish priest to begin work in his parish, and must have his sanction to continue it.

§ 48.

10. CHURCHWARDENS.[a]

The office of churchwardens[1] is first mentioned in the fourteenth century.[2] These officers were laymen who were appointed in the

[3] Civil courts would presumably not enforce the keeping of such life-long obligations, which are not reconcilable with modern notions of personal liberty.

[1] The Latin designation is *oeconomi*.

[2] On the earliest mentions see Smith, *The Parish* 2nd Ed. p. 69. According to Blunt, *l.c.* p. 255, note, the origin of the office dates from then because it was at that time (cf. *e.g.* const. of archbishop Gray of York, 1250, Wilkins I, 698; const. of Peckham, 1280, Wilkins II, 49 [on readings v. Martin, *Regist. Epist. Peck.*, *Rer. Brit. Scr.* No. 77, vol. III pp. cxxxix ff.]; counc. of *Merton*, 1305, Wilkins II, 280) that the duty of repairing the nave and of furnishing the utensils for divine service finally settled on the parishioners. As far as investigation has hitherto been pursued the office of churchwardens is distinct in origin from that of synodsmen, the witnesses summoned to episcopal or archidiaconal visitation meetings; yet the two offices soon became closely connected

[a] Blunt, *The Book of Church Law* Book IV, chap. 1.—Phillimore, *Eccles. Law* 1873 ff.—Prideaux. Humphrey, *Directions to Churchwardens for the faithful discharge of their duty.* 1701. 9th Ed. London, 1833, by Robert Philip Tyrwhitt.—Smith, Toulmin, *The Parish* 2nd Ed. pp. 68 ff.—Steer, *Parish Law* 5th Ed. pp. 96 ff.

several parishes [3] by their fellow parishioners [4] to represent them in the duties of repairing the church and delivering the various objects required for divine service, and to exercise custody or guardianship of the church property. By degrees many other rights and duties became vested in them. In particular, owing to the legislation of the reformation period, they were engaged in such secular functions as the administration of outdoor relief; to them (with others) was conveyed the office of overseers of the poor.

Their position subsequently received attention in the canons of 1604,[5] 'All churchwardens or questmen in every parish shall be chosen by the joint consent of the minister and the parishioners, if it may be: but if they cannot agree upon such a choice, then the minister shall choose one, and the parishioners another.' The latter mode of appointment is now customary in most places; it or an analogous mode of procedure is statutably established in the case of new ecclesiastical parishes or districts.[6] The canons of 1604 have not interfered with local customs fixing a different usage.[7] After nomination churchwardens need formal admission by the bishop or the archdeacon.[8] But such admission cannot, as a rule, be refused.[9]

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and ultimately became fused. Smith, *l.c.* 69 ff.; Kennet, *Parochial Antiquities* Ed. 1818, II, 363 f.; Ayliffe, *Parergon* 515 f.; Gibson, *Of Visitations* 59 ff.; Gibson, *Codex* 2nd Ed. p. 960.

On sidemen cf. end of this §.—In the Latin canons of 1604 (cf. app. XII) in the heading of VI and in that of c 90 *inquisitores* and *assistentes* are identical, whilst in the text of cc 89 and 90 *inquisitores=oeconomi*. In the English translation which appeared at the same time (Cardwell, *Synodalia* I, 245 ff.) on the one hand *churchwardens* and *questmen*, on the other *sidemen* and *assistants* are treated as identical.

[3] The civil parish and the ecclesiastical parish coincided for administrative purposes. Cf. § 9 III.

[4] Smith, *l.c.* 71 ff.

[5] c 89 (append. XII).

[6] 58 *Geo. III* c 45 s 73 (one churchwarden to be chosen by the householders, resident in the new district, who are entitled to vote in the election of churchwardens); 1 & 2 *Gul. IV* c 38 s 16 (renters of pews), s 25 (vestry); 6 & 7 *Vict.* c 37 s 17 (inhabitants); 8 & 9 *Vict.* c 70 s 6 (householders), s 7 (renters of pews).

[7] According to Blunt, *l.c.* 259, the following are the principal customs of the kind: 1. In some large parishes in the north of England a churchwarden is chosen for each township of the parish; 2. In old London parishes both churchwardens are appointed by the parishioners; 3. They are sometimes appointed by the *select* vestry; 4. Sometimes by the lord of the manor; 5. In some few cases the incoming churchwardens are chosen by the outgoing ones.—By ordinance of the long parliament, 9th Feb. 1648, four, three, two or one substantial inhabitant or inhabitants are to be chosen yearly as churchwardens by the inhabitants of the parish, and are within one month after their choice to be allowed and approved by two of the nearest justices of peace. These churchwardens and the overseers of the poor are entitled to levy rates.

[8] 5 & 6 *Gul. IV* (1835) c 62 s 9 enacts that churchwardens and sidemen are no longer required to take the oath which they formerly took on entering or quitting office, but before beginning to discharge their duties must make and subscribe, before the ordinary or other competent person, a declaration that they will faithfully and diligently perform the duties of their office.

[9] Blunt, *l.c.* 261 f., Smith, *l.c.* 91. On the question whether acts done before declaration made are valid see the latter, as quoted.

The duty of churchwardens is to attend to the maintenance of the church fabric and of the churchyard, in so far as the maintenance devolves on the parishioners; they have the care of the movables belonging to the church and ought to provide the necessaries for divine service. It is incumbent on them to preserve order in the church and in the churchyard during the time of worship; and it is they who assign seats to the parishioners, respect, however, being paid to private rights. For the necessary funds, they are chiefly dependent on the rate granted by the vestry and collected from those who are willing to pay. 31 & 32 *Vict.* (1868) c 109 deprived the rate of its compulsory character without changing the mode of granting and levying it. No person who refuses to pay is entitled 'to inquire into, or object to, or vote' in respect to the expenditure of the money collected. The act also empowers the appointment in any parish of 'Church Trustees,'[10] to accept and hold contributions for ecclesiastical purposes; these trustees may from time to time pay over to the churchwardens sums to defray necessary expenses.

During divine service alms are collected, generally by the churchwardens. The service over, the money given at the offertory is disposed of to such pious and charitable uses as the minister and churchwardens shall agree upon. If they differ, the ordinary decides as to its application.[11]

The churchwardens have, furthermore, the duty of reporting to the ordinary offences committed by the clergy or the laity of the parish in respect of matters cognizable by the ecclesiastical courts.[12] This authority to present is a survival of the medieval procedure in holding episcopal synods and archidiaconal visitations. At the beginning of the first revolution an act of 1641[13] forbade ecclesiastical authorities to bind any person by oath to make presentments of any crime or offence. This provision was repealed by act of 1661.[14] But a large number of the cases in which presentment might have been made have, owing to greater religious toleration, ceased to be punishable; presentments for offences against morality have become almost wholly obsolete, as, indeed, has ecclesiastical jurisdiction in general in regard to moral questions;[15] in other cases they are still made, but are infrequent.

Lastly, in sequestration[16] during vacancy (sometimes in sequestration for other causes) the churchwardens are generally appointed sequestrators, in which capacity they have to manage the profits of the living and control the expenditure.

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[10] The church trustees shall consist of the incumbent and of two householders or owners or occupiers of land in the parish to be chosen one by the patron, one by the bishop of the diocese.

[11] See rubric in communion service, and Blunt's note in *Annotated Book of Common Prayer* Ed. 1884, p. 399.

[12] Can. 113 ff. of 1604 (append. XII).

[13] 16 sq. *Car. I* c 11 s 2 (cf. § 7, note 36).

[14] 13 *Car. II* st. 1 c 12 s 2; see, however, also s 4 (cf. § 7, note 69). Cf. further Phillimore, *Eccl. Law* 1849.—On 5 & 6 *Gul. IV* (1835) c 62, cf. above, note 8.

[15] Cf. § 61, note 35.

[16] Cf. § 45, note 9.

From the beginning of the seventeenth century, churchwardens in most parishes gradually became the chief officials for temporal business. Those, however, who in consequence of the Church Building and New Parishes Acts of the nineteenth century were chosen for newly divided ecclesiastical parishes and districts, were confined to ecclesiastical affairs. By the Local Government Act of 1894, 56 & 57 *Vict.* c 73, the churchwardens in all rural parishes have lost their positions as overseers of the poor; their other powers in temporal affairs have also been taken from them in all rural parishes which have received a parish council, and have been vested in the council; in smaller parishes which receive no council, these powers may, on the proposal of the parish meeting, be vested in it by the county council. Analogous arrangements may be made under certain circumstances for urban districts through the local government board.[16a]

With the churchwardens are mentioned in the canons of 1604 sidemen[17] or assistants.[18] To the latter belong essentially the same rights as to the churchwardens. According to the canons just mentioned they are to be appointed by the parish priest and the parishioners jointly; or in case of disagreement, by the bishop. They are now only found in a few large parishes, and act as deputies of the churchwardens in outlying townships.[19]

11. MINOR OFFICERS.[a]

§ 49.

A. PARISH CLERKS.

THE office of parish clerk[1] corresponds tolerably closely to that of *Kantor* in a German congregation. He has, in particular, the duty

[16a] s 5: . . . *the churchwardens of every rural parish shall cease to be overseers* . . . ; s 6: *upon the parish council of a rural parish coming into office, there shall be transferred to that council*: . . . (*b*) *the powers, duties and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers*, . . . (then follows a special regulation as to the maintenance of closed churchyards) . . . (*c*) similarly, all rights which now belong to overseers and churchwardens jointly. s 19: *In a rural parish not having a separate parish council*, . . . (10) *on the application of the parish meeting the county council may confer on that meeting any of the powers conferred on a parish council by this Act*. . . . s 33: Possible application to urban districts.

[17] The form *sidesmen* is also in use. The name is said to be corrupted from *synodsmen*.—According to Gibson, *Codex* 2nd Ed., shortly before the reformation it became usual that, instead of the *testes synodales*, the churchwardens, with two, three or more parishioners should present; these assistant parishioners were the origin of sidemen or sidesmen.

[18] Cf. above, note 2.—Lat. text of canons in app. XII.

[19] Blunt, *l.c.* 255, note 1.

[1] Cf. the titles *church clerk*, *chapel clerk*.

[a] Blunt, *The Book of Church Law* Book IV c 3.—Phillimore, *Ecclesiastical Law* 1900 ff.—Toulmin Smith, *The Parish* 2nd Ed. pp. 197 ff.—Steer, *Parish Law* 5th Ed. pp. 116 f.

of acting as leader of the congregation in regard to the responses and singing. In small parishes his office is frequently combined with that of sexton.[2]

The parish clerk is, as a rule, a layman. His position is mainly determined by canon 91 of 1604,[3] which, however, being issued without the consent of parliament is not binding as against laymen. The canon gives the appointment to the 'parson, or vicar, or . . . the minister of the place for the time being.'[4] Any variation in the mode of appointment holds good, if based on old custom; thus in a few places the parishioners can appoint. The clerk is usually licensed by the ordinary, but this does not seem to be absolutely necessary.[5] He must be at least twenty years old.[6] He must take an oath to obey the minister.[7] Appointment is for life, and his office is his freehold. Thus he cannot be dismissed arbitrarily, but only for sufficient reason, the sufficiency being subject to examination in the courts.[8] 7 & 8 *Vict.* (1844) c 59 s 5 provides a general method of procedure in dismissing parish clerks who are laymen, the 'archdeacon or other ordinary' adjudicating upon the case.[9] The income of a parish clerk is derived from a salary, payable out of the church rate, from fees and Easter offerings. He has the right of causing his duties to be performed by a suitable deputy.

By 7 & 8 *Vict.* c 59 it is enacted that those entitled to appoint or elect parish clerks may fix upon persons in priest's or deacon's orders to fill the office. The parish clerk in orders must perform 'all such spiritual and ecclesiastical Duties . . . as the . . . Rector or other Incumbent, with the Sanction of the Bishop of the Diocese, may from Time to Time require.' He must be licensed by the bishop, and when appointed by any other than the parish priest, his appointment is subject to the approval of the latter. His office is not his freehold; on the contrary, he may be dismissed under the same circumstances and by the same method as a stipendiary curate.[10]

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[2] On the earlier history of the office cf. Blunt, *l.c.* p. 288, note 1. Smith, *l.c.* p. 197, note 1. The heading of can. 91 of 1604 identifies *clericus parochialis* with the *ostiarius*.

[3] Printed in app. XII.

[4] Smith, *l.c.*, contends that this was an innovation.

[5] Peak *v.* Bourne, 6 *Geo. II*, Strange, *Reports* 942; Smith, *l.c.* 202; Phillimore 1902, 1905.

[6] Canon 91 of 1604.

[7] Phillimore 1902.

[8] To make him more easily removable 59 *Geo. III* c 134 s 29 directs that the clerk in every church or chapel built etc. under that act or under 58 *Geo. III* c 45 (which it amends) is to be appointed *annually* by the minister. By 19 & 20 *Vict.* c 104 s 9, 'The parish clerk and sexton of the church of any parish constituted under' 6 & 7 *Vict.* c 37, and 7 & 8 *Vict.* c 94, 'or this act shall and may be appointed by the incumbent for the time being of such church, and be by him removable, with the consent of the bishop of the diocese, for any misconduct.' Blunt, *l.c.*

[9] *An Act for better regulating the Offices of Lecturers and Parish Clerks.*

[10] ss 2, 3 of act cited.

§ 50.

B. SEXTONS.[a]

The official duties of the sexton [1] vary at different places and are for the most part determined by custom. As a rule he has to attend to the cleaning of the church and to the churchyard, as also to the *instrumenta* of worship; he has to ring the bells [2] and to make, himself or by deputy, the necessary preparations for burials. Women may fill the office.

The appointment of the sexton is regulated very much by custom. It may rest with the parish priest or the churchwardens or with the parish priest and churchwardens jointly.

The income accrues, according to the usage existing in the several parishes, from a variety of sources. Commonly the sexton receives a salary paid by the churchwardens out of the church rate, as well as fees for burials.

The office of the sexton, like that of the parish clerk, is his freehold.[3] So that arbitrary dismissal is not allowable.[4]

§ 51.

C. BEADLES.[b]

The beadle is the messenger of the parish. His duties relate mainly to its temporal concerns; but in many places it is usual for him to be present at divine service to assist in the maintenance of order. He is the attendant of the officers of the parish, particularly of the churchwardens, and is appointed by the vestry, generally from year to year. His salary is paid out of the church rate.

§ 52.

D. ORGANISTS.[c]

The office of organist exists in chapter and in most parochial churches, although in the course of this century puritanical opposition was raised to the introduction of organ-playing.[1] It is now recognized that every incumbent has the right of deciding whether

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[1] Sexton: the word is a corruption of *sacristan.*

[2] Or, he is the superintendent of the bell-ringers. These bell-ringers form themselves into unions; for a list of them see *Church Year-Book*, 1891, pp. 452 ff.

[3] For a different opinion see Smith, *l.c.* p. 194, note.

[4] On the appointment and dismissal of the sexton in new parishes under 19 & 20 *Vict.* c 104, cf. § 49, note 8.

[1] Cf. also parliamentary ordinance of 9th May, 1644: . . .; *And that all Organs, an the Frames or Cases wherein they stand in all Churches and Chappels aforesaid, shall be taken away, and utterly defaced, and none other hereafter set up in their places;* . . .

[a] Blunt, *The Book of Church Law* Book IV c 3.—Phillimore, *Ecclesiastical Law* 1911.—Toulmin Smith, *The Parish* 2nd Ed. pp. 193 ff.—Steer, *Parish Law* 5th Ed. pp. 115 f.

[b] Blunt, *The Book of Church Law* Book IV chap. 3.—Toulmin Smith, *The Parish* 2nd Ed. pp. 193 ff.

[c] Blunt, *The Book of Church Law* Book IV chap. 3.—Phillimore, *Ecclesiastical Law* 927–929, 1914, Addenda II, 18.

and when the organ may be played; but the parish cannot without consent be charged for erecting and repairing it.

The methods of appointing the organist and of obtaining his salary are various.

§ 53.

12. LECTURERS.[a]

THE lecturer is an assistant clergyman, priest or deacon, attached to the parish priest or, in chapter churches, to the regular clergy of the chapter.[1] The office is found especially in the churches of London and other cities. The lecturer is distinguished from the reader by the fact that he must be in holy orders; he is distinguished from the stipendiary curate in that his income is not derived from the benefice or parish funds, but arises from endowment or from special voluntary contributions.

The form of the lecturer's appointment depends on the provisions of the deed by which the lectureship was founded; otherwise, on old custom. Election is, as a rule, by the vestry. The lecturer needs approval and licence from the archbishop of the province or the bishop of the diocese.[2] The licence is not conferred until the oaths are taken and the declarations made which are prescribed for persons about to be instituted or collated to a benefice.[3] Lastly, the parish priest may forbid the use of his pulpit to the lecturer, unless immemorial usage or some other reason intervene.[4]

The lecturer has no cure of souls; he has only to deliver lectures or sermons. But the ordinary service must be held in connexion with his discourse.[5] By 7 & 8 *Vict.* (1844) c 59 the bishop is empowered, with the assent of the incumbent, to require the lecturer to perform other clerical or ministerial duties, as assistant curate or otherwise of the place in which the lectureship is.[6]

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[1] Prebendaries are sometimes bound by appointment of the founders to read lectures, and may thence be called lecturers. Phillimore 134.

[2] 14 *Car. II* (1662) c 3 *Act of Uniformity*, s 15: . . . *that no person shall be or be received as a Lecturer or permitted suffered or allowed to preach as a Lecturer or to preach or read any Sermon or Lecture in any Church Chappell or other place of Publique Worshipp . . . unlesse he be first approved and thereunto licensed by the Archbishopp of the Province or Bishopp of the Diocese or (in case the See be void) by the Guardian of the Spiritualties under his Seale*, . . . Can. 36 of $\frac{1604}{1865}$ (append. XII).

[3] 28 & 29 *Vict.* (1865) c 122 *Clerical Subscription Act*, s 5; 31 & 32 *Vict.* (1863) c 72. [4] Phillimore, *Eccles. Law* 585.

[5] The object of this rule was to make it difficult for puritans to hold lectureships. According to Charles I's instructions (1633; in Cardwell, *Doc. Ann.* 177) V, 2, the lecturers were to read divine service according to the liturgy printed by authority, in their surplices and hoods, before the lecture. Now 14 *Car. II* (1662) c 4 *Act of Uniformity* s 18 prescribes that the ordinary service shall be read by some deacon or priest in the church, before the sermon or lecture and in the presence of the lecturer. This does not apply to the university sermon or lecture (s 19).

[6] s 1: . . . *to perform such other clerical or ministerial duties, as assistant curate or otherwise . . . , as the said bishop, with the assent of such incumbent as aforesaid, shall think proper* . . .

[a] Phillimore, *Eccles. Law* 584 ff.

13. ECCLESIASTICAL ASSEMBLIES.

A. NATIONAL AND PROVINCIAL SYNODS.

§ 54.

a. Historical.[a]

UNTIL the conference of Streoneshalch (= Whitby), 664, there were in the Anglo-Saxon kingdoms two schools of believers, the adherents of which had no communion with each other.[1] Thus up to that time no church council could be held embracing all Anglo-Saxon Christians.

The first great ecclesiastical assembly of the Anglo-Saxons of

[1] Cf. § 1, notes 13 ff.

[a] 1. Sources: The *Schedules of Continuation* and probably other documents relating to the convocations of older times were destroyed in a fire in 1666. Reports of some of the early debates of the convocations will be found in the collections cited in append. XIV, I, 1. For a conspectus of proceedings preserved see Cardwell, Introduction to Gibson's *Synod. Anglic.* Ed. 1854, pp. lv ff. The proceedings since the middle of the nineteenth century have been published by private persons, but with the co-operation of the prolocutors etc.:—

For the provinces of Canterbury and York: From Nov. 1852 to June 1853, *Synodalia, a Journal of Convocation*, ed. Charles Warren, London, 1852, 53; from Aug. 1854 to Feb. 1857, *The Journal of Convocation*, by same editor (contains also many essays respecting convocation etc.).

For the province of Canterbury: In 1888, 9 there was printed by convocation a collection (by Joyce) of reports from the public journals on the proceedings in 1852 (1847) to 1857. Cf. *Chron. of Conv. Cant.* 1888, pp. 129, 180, 185; 1889, p. 123.—From 1858 onwards *The Chronicle of Convocation, being a Record of the Proceedings of the Convocation of Canterbury*, has appeared in numbers, each covering a session (3 or 4 days at most). With the year 1880 began the practice of prefixing a summary, containing the resolutions passed. Committee reports etc. are appended.

For the province of York: From 1859 to March, 1862 *The York Journal of Convocation, containing the acts and debates of both Houses of the Convocation of the Province of York, edited from authorized sources by* George Trevor. York, Durham, London, 1861.—Since 1874 in 1–2 yearly numbers under the title: *The York Journal of Convocation, containing the Acts and Debates of the Convocation of the Province of York.* London, York.

2. Treatises, histories etc.:—

Atterbury, Fr. *The Rights, Powers and Priviledges of an English Convocation.* London, 1700. With *Addenda.* Gibson, Edmund. *Synodus Anglicana, or The Constitution and Proceedings of an English Convocation shown from the Acts and Registers thereof* . . . (Appendix contains reprint from the registers of upper house, 1562, 1640, 1661, and the Journals of lower house, 1586 and 1588, 1702, New Ed. Oxford, 1854, by Edward Cardwell.)—Hefele, Karl Joseph. *Konziliengeschichte*, 1st Ed. 7 vols. Freiburg i. Breisg. 1855 ff. Vol. 8 etc. continued by Hergenröther. 2nd Ed. 1873 ff.—Hody, Humphrey. *A History of English Councils and Convocations and of the Clergy's Sitting in Parliament* . . . London, 1701. 3 parts.—Joyce, James Wayland. *England's Sacred Synods. A Constitutional History of the Convocations of the Clergy from the earliest records to 1662.* London, 1855.—Same author. *Handbook of the Convocations or Provincial Synods of the Church of England.* London, 1887. —Kennet, White. *Ecclesiastical Synods and Parliamentary Convocations in the Church of England. Historically Stated* . . . London, 1701.—Lathbury, Thomas. *History of the Convocation of the Church of England from the earliest period to 1742.* 2nd edition, London, 1853. (Rather, general church history in connexion with the proceedings of convocation.) —Pearce, Robert R. *The Law relating to Convocations of the Clergy, with forms of proceeding in the Provinces of Canterbury and York, etc.* London, 1848.—Trevor, George. *The Convocations of the two Provinces, their origin, constitution, and forms of proceeding* . . . London, 1852. (Relates especially to convocation of northern province.)—Wake, William. *The State of the Church and Clergy of England in their Convocations* . . . *historically deduced with a large appendix of original writs and other instruments.* London, 1703.

For the Anglo-Saxon period compare Stubbs, *Const. Hist.* I, 251 ff. c 8 § 87. On provincial councils in the Anglo-Saxon period see Hinschius, *Kirchenrecht* III, 478, note 3; on the mixed ecclesiastical and secular councils of the petty kingdoms and of the united Anglo-Saxon kingdom, *l.c.* III, 516, note; on the primatial, legatine and provincial synods from William I to John, *l.c.* III, 572 ff.

which a record has survived, is the council of Herutford (=Hertford), held by archbishop Theodore in 673. Bishops from five kingdoms were present or represented at it.[2] The council of Haethfelth, equally representative, followed in 680.[3] At Herutford it had been resolved that a great council should be held annually;[4] but the resolution was not, so far as is known, regularly carried into effect. Nevertheless, down to the time of the wars with the Danes great church councils are mentioned with comparative frequency.[5] Afterwards, until the Norman conquest, such meetings fell into disuse.[6]

To a fixed, consistent form these Anglo-Saxon councils did not attain. At them appeared sometimes representatives from one or more kingdoms, sometimes representatives from one archiepiscopal province; they were seldom national councils of the whole Anglo-Saxon church. Moreover, no strict division was drawn between temporal and ecclesiastical assemblies. The general Witenagemot, at which the bishops, abbots of larger monasteries, and sometimes the inferior clergy, also assisted, discussed alike secular and spiritual matters, and passed resolutions thereon. But side by side with the Witenagemot, after the councils, just mentioned, of Herutford and Haethfelth there were meetings at which ecclesiastical matters formed the sole subject of deliberation, whilst the majority of those who attended were of the clergy. Yet even such assemblies were not called by the archbishop independently: at least the co-operation of the king was required.[7] As a rule, the

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[2] Haddan and Stubbs, *Councils* III, 118 ff. On smaller councils alleged to date from 605 see Hefele, *Konziliengeschichte* 2nd Ed. III, 64, and Hinschius III, 478, note 3.

[3] Haddan and Stubbs III, 141.

[4] Older church law, especially the resolutions of councils in the fourth and fifth centuries, required the holding of two provincial synods in the year. The various regulations to this effect are cited in Hinschius, *Kirchenrecht* § 173, III, 473, note 6. In and after the sixth century, once a year was the rule frequently laid down. Hinschius, *l.c.* III, 474, note 3. Richter, *Kirchenrecht* § 149, note 8. Council of *Herutford*, 673, c 7: it was the rule of the old canons *ut bis in anno synodus congregetur: sed quia diversae causae impediunt, placuit omnibus in commune, ut Kalendis Augustis in loco, qui appellatur Clofeshoch semel in anno congregemur* (Haddan and Stubbs III, 118). Perhaps a resolution of the synods of *Pincahala* and *Celchyth*, 787, c 3, is to be understood as meaning that in future two provincial synods are to take place annually. (Cf. § 57, note 1.)

[5] Stubbs, *Const. Hist.* I, 252 c 8 § 87.

[6] Stubbs, *Const. Hist.* I, 263 c 8 § 89. Report of the resolutions of the national synod at *London*, 1075 (Wilkins I, 363): *Et quia multis retro annis, in Anglico regno usus conciliorum obsoleverat; . . .* So *Consiliatio Cnuti* (law-book, first half of 12th cent.), introduct. c 4: *ecclesiastice vero institutiones sinodorumque conventus apud Anglos inusitati adhuc fuerant, . . .*

[7] In regard to the council of Herutford, 673. Beda, it is true, says: *Theodorus cogit concilium* (Haddan and Stubbs III, 118); see, however, the text given by Beda of the resolutions of Haethfelth. The introduction runs: *In nomine Domini nostri Jesu Christi . . . , imperantibus dominis piissimis nostris Ecgfrido rege Hymbronensium . . . , et Aedilredo rege Mercinensium . . . et Alduulfo rege Estranglorum . . . et Hlothario rege Cantuariorum . . . praesidente Theodoro, gratia Dei*

archbishop presided; but kings and the magnates of the land were frequently present as members of the councils.[8]

As the constitution of the Witenagemot in those days varied very considerably, so it appears that the officers of the church invited to ecclesiastical councils were not always the same. Bishops we find constantly present, and when the monasteries had gained in importance, abbots also; not always,[9] it would seem, lower dignitaries,

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Archiepiscopo Britanniae insulae . . . fidem rectam exposuimus (Haddan and Stubbs III, 141).--Report by papal legates of council of *Pincahala* (787): . . . *quia . . . Rex* (of Northumbria) *longe in Borealibus commorabatur, misit . . . Archiepiscopus* (of York) *missos suos ad regem, qui continuo omni gaudio statuit diem concilii . . .* (Haddan and Stubbs III, 447). Council of *Clovesho*, 798: . . . *Ego Athelhardus . . . Doroberniensis ecclesiae metropolitanus, cum . . . rege nostro Cenulfo, convocans universos provinciales Episcopos nostros, duces et abbates et cujuscunque dignitatis viros, ad synodale concilium . . .* (Haddan and Stubbs III, 512). On a council under Edgar (959–975) cf. *Regularis Concordia* [end of 10th century; Latin and Anglo-Saxon text in Selden, *Notae ad Eadmerum*, London, 1623, p. 145; the literature on the *Reg. Conc.* is brought together in *Archiv für das Studium der neueren Sprachen* vol. 84 (year 1890) p. 1 and in H. Logeman (Early English Text Society), *The Rule of St. Benet* (London. 1888)]. Prooemium: *Rex . . . Synodale Concilium Wintoniae fieri decrevit . . .*; present were . . . *Episcopi . . . Abbates et Abbatissae . . .* — On an ecclesiastical council held *circ.* 710–16 in Wessex without the co-operation of the archbishop of Canterbury see Willibald, *Vita Bonifacii* (written soon after 754): . . . *statim synodale a primatibus ecclesiarum* (*i.e.* by the bishops) *cum consilio praedicti regis* (Ine of Wessex) *servorum Dei factum est concilium* (*Monumenta Germaniae* II, 338; Haddan and Stubbs III, 295).

[8] Thus at the council of *Clovesho*, 747, there was present king Aedilbald of Mercia *cum suis principibus ac ducibus* (Haddan and Stubbs III, 362); report of the legates on the council of *Pincahala*, 717 (Haddan and Stubbs III. 459, 460): *Haec decreta, beatissime Papa Hadriane, in concilio publico coram Rege Aelfuualdo, et Archiepiscopo Eanbaldo, et omnibus Episcopis et abbatibus regionis, seu senatoribus, et ducibus, et populo terrae proposuimus . . .* Then there also sign *judices optimates et nobiles.* At the legatine council of *Celchyth*, 787, there was present *Offa cum senatoribus terrae* (Haddan and Stubbs III, 460). So we read of a council of *Celchyth* (almost certainly in 801): . . . *in synodali conciliabulo . . . coram rege* [Cenulf] *Merciorum et praesulibus Ecclesiarum Dei, necnon et ducibus seu principibus . . .* (Kemble, *Cod. Dipl.* No. 116; Haddan and Stubbs III, 531, note.) At the council of *Celchyth* in 816 archbishop Wulfred presided and bishops are mentioned as assessors, as also king Cenulf *cum suis principibus, ducibus et optimatibus* (*l.c.* III, 579). From the fact that kings and temporal magnates were generally present even at councils at which legates or archbishops presided, and subscribed the resolutions, their assent was inferred. But such assent was apparently not necessary to the validity of the resolutions. So Stubbs, *Const. Hist.* I, 252 c 8 § 87 and Hinschius, *Kirchenrecht* III, 478, note 3; a contrary view is maintained by Philipps, *Engl. Rechtsgesch.* I, 105. The addition *confirmo* sometimes joined to the king's signature is also found with the signatures of other persons, and only attests the correctness of the report of proceedings.

[9] They were present *e.g.* at *Herutford*, 673 (*Theodorus cogit concilium episcoporum, una cum eis, qui canonica patrum statuta et diligerent et nossent, magistris ecclesiae pluribus.* Haddan and Stubbs III, 118), *Haethfelth*, 680 (*collecto venerabilium sacerdotum doctorumque plurimorum coetu.* Haddan and Stubbs III, 141), *Pincahala*, 787 (*His quoque saluberrimis admonitionibus presbyteri, diaconi ecclesiarum, et abbates monasteriorum, judices optimates et nobiles, unopere, uno ore consentimus et subscripsimus.* Haddan and Stubbs

priests and deacons. However, as a general rule, spiritual persons of these classes did take part in the councils.[10]

Not until the twelfth or thirteenth century did the provincial and national councils gradually gain a definite constitution by the exclusion of laymen from membership, by a new regulation of the mode of summons and by a development of internal organization.

The complete and fundamental detachment of the ecclesiastical assembly from the temporal is made clear by the sitting, frequent under Henry I, of the two bodies separately at the same place.[11] But the prelates remained members of the general national council though they sometimes, even in the thirteenth and fourteenth centuries, deliberated apart from the laity.[12] Moreover, both in the reign of Henry I and later, down to the middle of the thirteenth century, meetings of the clergy and the laity jointly are recorded under various names. Therewith are to be connected the efforts of the kings (1254, 1283, 1295 ff.) to bring about, mainly for the purpose of granting taxes, a combined gathering of the two bodies.[13] Just, however, as the attendance of laymen at ecclesiastical councils had gradually ceased, so now the lower clergy opposed the endeavour to compel their presence at national assemblies composed on the basis of temporal property. They did, indeed, appear in parliament in answer to the king's summons, but immediately detached themselves from the rest. These separate assemblies of the clergy apparently became fused, at latest with the reign of Edward III, with the church councils, which meanwhile had continued in their old form. Or perhaps there was not so much a fusion as a gradual decay of the parliamentary church gatherings, whilst part of their rights passed to the ecclesiastical councils.[14] In any case we have

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III, 460), *Celchyth*, 816 (*undique sacri ordines* [*ordinis ?*] *praesules cum abbatibus, presbiteriis* [*presbiteris ?*] *diaconibus pariter, tractantes* . . . Haddan and Stubbs III, 579).

[10] The resolutions of the council of Clovesho (803), for instance (in some of the resolutions king and nobles were also concerned; Haddan and Stubbs III, 542), are subscribed by one archbishop, twelve bishops, twenty-five abbots, forty-four priests, one archdeacon, four deacons (Haddan and Stubbs III, 546). We can hardly assume—with Stubbs, *Const. Hist.* I, 254 c 8 § 87—that the constitution of this council was an extraordinary one; for in many other cases the presence of the inferior clergy also is mentioned (cf. note 9); though it is true they may not always have subscribed. But their influence in shaping the resolutions adopted was probably small.—Cf. below, note 28.

[11] See more in Stubbs, *Const. Hist.* I, 404 c 11 § 125. From the transition period cf. the report in *Chronicon Saxon. anno* 1085 (*Rer. Brit. Scr.* No. 23) I, 352: *þa to þam midewintre waes se cyng on Gleaweceastre mid his witan, and heold þaer his hired V dagas, and siððan þe arcebisceop and gehadode men haefden sinoð þreo dagas . . . After þisum haefde se cyng mycel geðeaht and swiðe deope spaece wiþ his witan* . . . ("At midwinter was the king at Gloucester with his Witan and held there his court five days, and then the archbishop and clergy had a synod three days . . . After this the king had a great deliberation and very deep discussion with his Witan.")

[12] Cf. § 21, note 30.

[13] Cf. § 21, near notes 13 ff.

[14] The prevalent opinion now is that the convocations of the present day are to be regarded solely as the successors of the earlier church councils, and that the parliamentary assemblies of the inferior clergy simply became by degrees

here the final failure of the attempt to unite, if only, in the first instance, for a limited purpose, representatives of the clergy and the laity in one deliberative assembly.

The king, who in the twelfth century had still often assisted at the meetings of the clergy, now took no further part therein. If he wished to negotiate with convocation he despatched one or more persons with full powers to act for him in the special case. These agents did not by virtue of such powers become members of the body to which they were commissioned. After the passing of the supremacy act of Henry VIII in 1536, representatives of the king, who were empowered to exercise the rights involved in the supremacy, appeared at the convocation of Canterbury. On their demand they were allowed, although laymen, to preside,[15] and thus the

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extinct. This opinion was last argued at length by Joyce, *Sacred Synods.* In its favour is the fact that in early times, for the most part, separate representatives were chosen for parliament and for convocation. Cf. § 21, note 23. Stubbs, *Const. Hist.* II, 210 c 15 § 200, advocates the same view. As proofs that the parliamentary representation of the clergy and convocation remained perfectly distinct bodies Stubbs urges: 1, the parliamentary representatives were one element of the general parliament and met in the same place, whilst the convocations were two provincial councils meeting generally at different places (London and York); [no case, however, is demonstrable in which a parliamentary assembly *confined to the lower clergy* met; on the other hand sometimes in the middle ages and more frequently after the reformation bishops of the northern province are mentioned as taking part in the deliberations of the southern convocation; it is thus not probable that in the transition period the chance presence of clergy of the northern province should be regarded as decisive of the parliamentary character of the assembly]; 2, the convocations contained the abbots and priors; these are not included in the praemunientes-clause; [but abbots and priors appeared in parliament in virtue of special summonses and could therefore attend, no less than the bishops, the separate meetings of the clergy. Cf. further *e.g.* the summons of 8th Oct. 1312 in § 21, note 25]; 3, the convocations were called by the archbishop's writ, the parliamentary proctors by the king's; [but summons was afterwards in both forms at once].—In the transition period the archbishop summons sometimes 'to parliament,' sometimes to appear 'before himself,' without, it would appear, any real difference. (It is, indeed, to be observed that until about the beginning of Edward III's reign neither the term *parliamentum* nor the term *convocatio* was used with strict limitation to any particular kind of assembly.) That the assemblies meeting under presidency of the archbishop but in obedience to royal ordinance were still for some time regarded as part of the representation of the nation (as temporarily the merchant assemblies were regarded; cf. Stubbs, *Const. Hist.* II, 201 c 15 § 195) is supported by the fact that it was usual to summon the convocations at the same time as parliament, and by the retention of the praemunientes-clause in the writs summoning bishops to parliament. At no time, moreover, have the English kings expressed in favour of provincial synods a renunciation of the right to impose taxes not granted. Edward I expressed such renunciation in 1297 only as regards the national representative body (*par commun assent de tut le roiaume.* Cf. § 4, note 97); nevertheless, the money grants of the clergy were afterwards made in convocation. (But grants of money had already taken place at the beginning of Edward's reign at the, then purely ecclesiastical, provincial synods.)—Cf. also § 21, notes 20 ff.

[15] In Wilkins, *Concilia* III, 803 ('*ex registr. convoc. et Excerpt. Heylin*') it is expressly stated that the presidency was given to Petre, Crumwell's deputy, at his (Petre's) request. According to Collier, *Eccles. Hist.* IV, 336 and Burnet, *Hist. of Reform.* pt. III, p. 123, Crumwell himself presided at one of the follow-

king's right to the presidency was in principle again acknowledged. But this right was not afterwards, so far as is known, exercised by the sovereign either in person or by deputy.

The summoning of church councils was, as in the Anglo-Saxon period, so under the first Norman rulers, subject to the king's co-operation.[16] The summons was indeed issued by the archbishop, but he might not convene without the sovereign's orders. The pope in Henry I's reign and afterwards put forward the claim urged elsewhere from early times, that before the summoning of a national or provincial church council, he must be approached for his assent, and that whatever was resolved needed ratification by him.[17] It is not, however, known that this claim was in England, at any time,

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ing sessions. In Wilkins *l.c.* this is not mentioned. Crumwell signs first in several records of the resolutions of convocation. (Wilkins III, 809, Collier IV, 356.)

[16] The contrary is often maintained. In defence of the view in the text the following passages may be cited:—

William of Malmesbury, *Gesta Pontificum* (*Rer. Brit. Scr.* No. 52) Book I § 42 *Willelmus* (*I*) *rex in omnibus ei* [archbishop Lanfranc] *assurgebat, aggaudebatque et aliis, quos in bono fervore audisset, permisitque ei concilia congregare, . . .*

Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 48, year 1094. Anselm says to William II: *Jube, si placet, concilia ex antiquo usu renovari . . . Generale nempe concilium episcoporum ex quo rex factus fuisti non fuit in Anglia celebratum, nec retroactis pluribus annis.* The king answers: *cum mihi visum fuerit de his agam, non ad tuam sed ad meam voluntatem.* —(Of an occurrence in 1095 Eadmer reports, *l.c.* p. 53: *. . . ex regia sanctione ferme totius regni nobilitas . . pro ventilatione istius causae* (whether adherence to Urban was reconcilable with loyalty to the king) *in unum apud Rochingeham coit. Fit itaque conventus omnium Dominico die in ecclesia . . . , rege et suis secretius in Anselmum consilia sua studiose texentibus. Anselmus autem, episcopis, abbatibus, et principibus ad se a regio secreto vocatis, eos et assistentem monachorum, clericorum, laicorum numerosam multitudinem . . . alloquitur.* From this meeting the bishops convey his declarations to the king and bear answer back. (The separate meeting of the clergy held by Anselm in this case cannot be regarded as a regular church council. Thus the passage is not, as is sometimes assumed, decisive either way.)

Letter of Anselm, 1099–1100: *Concilium non permisit celebrari in regno suo ex quo rex factus jam per tredecim annos.* (Printed more fully in § 4, note 17.)

William of Newburgh (*Rer. Brit. Scr.* No. 82) I, 133, year 1166: *Rex vero nolens eos* (the heretics seized) *indiscussos vel dimittere vel punire, episcopale praecepit Oxoniae concilium congregari.*

Benedict (*Rer. Brit. Scr.* No. 49) I, 112, year 1176: *Interim rediit ad curiam domini regis praedictus Hughezun cardinalis ille, quem summus pontifex in Angliam miserat; et per consilium domini regis submonuit omnes episcopos et abbates et priores totius Angliae, quod essent . . . apud Lundonias ad audiendum mandata et praecepta summi pontificis.*

For further proofs see Hinschius, *Kirchenrecht* III, 573, note 10. On the councils (Winchester, 1139 and 1141, and Westminster, 1141) summoned in Stephen's reign by Henry of Winchester, papal legate, see Hinschius, *l.c.* III, 574, note 1.

[17] On the papal claim see *Decretum Gratiani lib.* I *dist.* XVII. Letter of Paschal II to Henry VIII and the English bishops in Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81), year 1115: *Vos praeter conscientiam nostram concilia synodalia celebratis . . .*

long[18] made good. With the end of the twelfth century, not before, the archbishops began to convene their councils without the king's order previously given, or indeed sometimes in defiance of his prohibition to hold them.[19] At the end of the thirteenth the innovation had gained such ground that the archbishops disputed all right on the king's part to demand the summoning of a council.[20] About this time, however, Edward I had resumed the practice of instructing the archbishops to call ecclesiastical assemblies. This he did on several occasions, nor is any instance known in which an archbishop rejected a request to this effect, given by Edward or his successors. Nay, Edward I and after him Edward II, on their own initiative and without the agency of the archbishop, summoned in various forms ecclesiastical councils. This was in connexion with their endeavour to bring about the representation of the lower clergy in parliament. The clergy based their resistance, which rested in fact on material considerations, on the form of the writs of summons and especially on the co-operation of the king, alleged to be inadmissible. Hence many slight alterations in the form of writ were made in this transition period.[21] It was only in the beginning of Edward III's reign that the legal position was established that the king might instruct the archbishops to summon, whereupon the latter must obey the instruction, but that the archbishops were also entitled to call convocation together on their own initiative without royal permission first obtained. The usage down to the reformation followed these lines.

Ratification by the king of the resolutions of councils had not been a fundamental requisite in the Anglo-Saxon period, even if it

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[18] In regard to the council of London, 1102, cf. Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) 141: . . . *praesedit Anselmus . . . In hoc concilio multa ecclesiasticae disciplinae necessaria servari Anselmus instituit, quae postmodum sedis apostolicae pontifex sua auctoritate confirmavit.*

[19] In the year 1200 archbishop Hubert (the king's chancellor) held a council of the clergy of both provinces at Westminster in spite of the express prohibition of the chief justiciar, who represented the absent king.—In 1257 a council summoned by archbishop Boniface met in defiance of the king's prohibition. *Annal. de Burton* (*Rer. Brit. Scr.* No. 36; *Ann. Monast.*) I, 403; the archbishop laid several subjects before the convocation for discussion, among them this: *Item, cum dominus rex prohibuerit praelatis Ecclesiae, sub forisfactura omnium terrarum suarum quas de eo tenent, ne venirent ad hujusmodi convocationem auctoritate domini archiepiscopi factam, an liceat et deceat et expediat tractare in hujusmodi convocatione de negotiis Ecclesiae a praelatis; vel potius, quod absit, prohibitioni regiae parere;* . . .

[20] Wilkins, *Conc.* II, 236 (30th April, 1298). The summons of archbishop Winchelsey begins: *Exigunt nonnunquam etiam contra animi destinationem, licet cum fastidio, petita concedi non tam dignitatis, quam instantia postulantis* (of the king) . . . On that account he summoned.

[21] Although there is a whole literature on the forms of summons in this transition period, the development is nowhere quite clearly traced. Cf. the collection in Joyce, *Sacred Synods* pp. 259 ff., which, however, is also not quite complete and not quite accurate.—The difficulty lies in the fact that it can hardly ever be certainly determined in a given case whether a summons to parliament or to a church council is meant; contemporary writers did not make a sharp distinction.

generally ensued.[22] William I had reserved to himself the right of causing all proposals to be previously submitted to his approval.[23] William II did not suffer church councils to meet.[24] At the beginning of the reign of Henry I Anselm, on a particular occasion (1102), begged that the laity might take part in a gathering of churchmen, in order to give their assent to the resolutions framed.[25] In 1108 the presence of the king and the assent of the temporal magnates is laid stress on in the heading to the resolutions of the bishops.[25a] In 1127 Henry I confirmed the resolutions of a council by special deed.[26] Passing to later times, we do not learn that the sovereign claimed the right of confirmation. At any rate, from the end of the twelfth century (at latest), no such right was exercised.

In the thirteenth century the internal organization of convocation was perfected.[27]

Along with the bishops there generally took part in ecclesiastical synods, even during the Norman period, abbots, deans of cathedrals, conventual priors as also archdeacons.[28] Besides these officials, proctors of the chapters were invited, probably for the first time, to the synod of the southern province in 1225.[29] As early as the

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[22] Cf. above, note 8. [23] Cf. § 4, note 12. [24] Cf. § 4, note 16.

[25] See the account drawn up by Anselm of the proceedings of the council of London, 1102, in Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 141: . . . *ipso* (Henr. I) *annuente, communi consensu episcoporum et abbatum et principum totius regni, celebratum est concilium . . . In quo praesedit Anselmus . . . Huic conventui affuerunt, Anselmo archiepiscopo petente a rege, primates regni, quatenus quicquid ejusdem concilii auctoritate decerneretur, utriusque ordinis concordi cura et sollicitudine ratum servaretur.* [25a] Cf. § 22, note 13.

[26] Rymer, *Foedera* 4th Ed. I, 8: *Sciatis quod auctoritate regia et potestate concedo et confirmo statuta concilii a Willelmo Cantuariensi archiepiscopo, et sanctae Romanae ecclesiae legato, apud Westmonasterium celebrati, et interdicta interdico. Si quis vero horum decretorum violator vel contemptor extiterit, si ecclesiasticae disciplinae humiliter non satisfecerit, noverit se regia potestate graviter cohercendum; quia divinae dispositioni resistere praesumpsit.* This is the *only* known example of such mode of confirmation. Stubbs, *Const. Hist.* I, 404 c 11 § 125, surmises that this confirmation is connected with the investment of the archbishop of Canterbury (in 1126; cf. § 34, note 12) with legatine powers.

[27] The most important of the documents relevant hereto are brought together in Stubbs, *Select Charters* 4th Ed. 1881, pp. 452 ff. Cf. also the conspectus of changes in the constitution of convocation in the *Chronicle of Convocation of Canterbury*, 1885, append. No. 189, p. 28. A history of the course of development is given in Stubbs, *Const. Hist.* II, 296 c 15 § 199.—The account in the text is mainly from these sources.

[28] For proofs see Joyce, *Sacred Synods* 224 ff. Whether parish priests were present in the early Norman period is doubtful. See Joyce, as quoted. Eadmer, *Hist. Nov.* (*Rer. Brit. Scr.* No. 81) p. 9, speaking of William I's time, mentions only a *generale episcoporum concilium.* The passage is printed in § 4, note 12. Council of *London*, 1075 (Wilkins, *Concilia* I, 363): *Ad comprimendam quorundam indiscretorum insolentiam, ex communi decreto sancitum est, ne quis in concilio loquatur, praeter licentiam a metropolitano sumptam, exceptis episcopis et abbatibus.*

[29] . . . *et significetis singulis capitulis ut mittant procuratores tam videlicet ecclesiarum cathedralium quam praebendalium et monasteriorum et aliarum domorum religiosarum ac collegiatarum* . . . Stubbs, *Sel. Ch.* 453. In the same year such representatives were ordered to attend the Scotch synod. (Cf. § 10, note 12.)

middle of the thirteenth century the archdeacons were regarded as the representatives of the clergy subordinate to them.[30] Special representatives of the inferior beneficed clergy at a provincial church assembly[31] are first mentioned on the occasion of a synod of the province of Canterbury in 1256.[32] In the years 1257 and 1258 no special representatives of the inferior beneficed clergy were summoned; the archdeacons, however, were to obtain full powers to represent those subordinate to them.[33] But how little at

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[30] Matthaeus Parisiensis, *Chronica Major* (*Rer. Brit. Scr.* No. 57) IV, 37, year 1240. The papal legate summons the bishops that they may grant a tax to the pope. The bishops answer: *Habemus archidiaconos nobis subjectos, qui norunt beneficiatorum sibi subjectorum facultates, nos autem ignoramus. Omnes tangit hoc negotium, omnes igitur sunt conveniendi, sine ipsis nec decet nec expedit respondere.*

[31] On the appearance of representatives of the lower clergy at civil assemblies in 1254 and 1255 see § 21, notes 13 and 14.

[32] Summons of the bishop of Lincoln to an assembly to be held on 18th Jan. 1256, printed in Matthaeus Parisiensis, *Chronica Major*, *Additamenta* (*Rer. Brit. Scr.* No. 57) VI, 314:—

H[enricus] permissione divina, etc., archidiacono Huntingdunensi, etc.

. . . *Proinde cum salubriter ut creditur sit provisum quod majores praelati religiosi, tam abbates quam priores necnon cathedralium ecclesiarum decani, personaliter cum quibusdam discretis canonicis suis, confratrum suorum procuratoribus, et singuli archidiaconi per se cum tribus aut quatuor discretioribus de suis archidiaconatibus pro se et cum mandato procuratorio consortum suorum, die Martis proxima post festum Sancti Hillarii apud Novum Templum Londoniis, cum coepiscopis nostris et nobis ibidem per Dei gratiam conventuris compareant, facturi in praemissis et consilium suum impensuri, prout ad utilitatem status ecclesiae et domini regis ac regni visum fuerit melius expedire. Vobis mandamus, firmiter injungentes, quatinus dictos praelatos et clericos in archidiaconatu vestro constitutos secundum discretionem vobis desuper datam prudenter sollicitetis interim atque caute, quod dicti praelati et vos personaliter, caeteri quoque per idoneos procuratores, dictis die et loco modis omnibus concurratis, congruum in hac parte consilium impensuri.*

[33] *Ann. de Burton* (*Rer. Brit. Scr.* No. 36) I, 389. In 1256 resolution is passed: *quod decani, praelati, regulares, ac archidiaconi tractabunt cum suis capitulis et clericis . . . , ita quod ad mensem post Pascha redeant Londonias per procuratores instructos ad plene respondendum seu componendum.* Summons of the archbishop of Canterbury to the bishop of Lichfield and Coventry, 1257 (*l.c.* 402): . . . *citetis decanum Lichfeldensis et priorem Coventrensis cathedralium ecclesiarum, necnon abbates et alios priores qui non subsunt abbatibus, archidiaconos . . . , . . . praecipiendo, ut praedicti decanus et prior . . . , abbates et alii priores cum literis procuratoriis nomine congregationum suarum confectis, ac dicti archidiaconi cum literis similibus factis ex parte clericorum qui subsunt eisdem . . . debeant interesse . . .* Summons of 1258 (*l.c.* 412): *Vocetis etiam decanos cathedralium ac aliarum ecclesiarum, necnon etiam abbates, priores majores, insuper et archidiaconos vestrae dioecesis universos, ut cum literis suorum subditorum procuratoriis . . . compareant.* Probably the same form of representation was in use at the council of Lambeth, 1261, for in the document (Wilkins I, 755) it is mentioned that the resolutions were framed by the bishops *de consensu et approbatione inferiorum praelatorum, capitulorum cathedralium et conventualium, necnon universitatis totius cleri Angliae.*—The *procuratores* present at the provincial council of *London apud Novum Templum*, 1269 (Wilkins, *Concilia* II, 19) seem to have been only representative of the chapters. Before the addition: *abbatum, priorum, rectorum, et vicariorum earundem dioecesium* a comma should be placed.

this time any particular persons were entitled to be summoned or any particular bodies to be represented, is shown by the summons to a convocation in 1273, wherein the bishops are invited in general terms to bring with them three or four of the most esteemed and most prudent in their church or diocese.[34] In 1277, besides chapter clergy and archdeacons, there were summoned independent plenipotentiaries of the whole of the lower clergy of each diocese.[35] At the provincial assembly called, by the king's command, at Northampton in 1283,[36] it was resolved that proctors of the lower clergy should be summoned to the next meeting. At this assembly of Northampton the clergy refused to grant subsidies because representatives of the lower clergy had not been summoned.[37] Thereupon

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[34] . . . *mandamus, quatenus omnes ecclesiae nostrae Cantuariensis suffraganeos auctoritate nostra vocetis . . . Et . . . injungatis . . . ut quilibet eorum vocet et ducat secum ad praedictam congregationem tres vel quatuor personas de majoribus, discretioribus et prudentioribus suae ecclesiae et dioceseos.* Stubbs, *Sel. Ch.* 455.

[35] . . . *coepiscopos . . . faciatis . . . evocari . . . quatenus nobiscum . . . in propriis personis conveniant una cum aliquibus personis majoribus de suis capitulis, et locorum archidiaconis, et procuratoribus totius cleri diocesium singularum.* Stubbs, *Sel. Ch.* 455.

[36] So Stubbs, *Sel. Ch.* 462 and at full length Stubbs, *Const. Hist.* II, 207, note 1 c 15 § 199.—Perry, *Hist. of Engl. Ch.* I, 381, note 1 c 19 § 8 (in agreement with Hody III, 138), on the other hand, assumes—for insufficient reasons—that the resolution in question originated at the council of Reading in 1279. That some resolution of this sort was passed at the council of Northampton in 1283 is clear from the summons, printed below in note 38, to the ensuing council of London, 1283. But, besides that, the following ordinance of archbishop Peckham has been handed down and sometimes appended to the resolutions of the council of Reading, 1279: *Item praecipimus, ut in proxima congregatione nostra tempore parliamenti proximi post festum Sancti Michaelis ad tres hebdomadas per Dei gratiam futura, praeter personas episcoporum et procuratores absentium, veniant duo aut unus a clero episcopatuum singulorum, qui auctoritatem habeant una nobiscum tractare de his, quae ecclesiae et communi utilitati expediunt Anglicanae, etiamsi de contributione aliqua vel expensis oportet fieri mentionem, etc.* (Wilkins, *Concilia* II, 49. On the MSS. in which the ordinances of Peckham are recorded see Martin, *Registr. Epist. Peckham* [*Rer. Brit. Scr.* No. 77] III, p. cxxxix.) This ordinance is not identical with the resolution mentioned in note 38, as there the time at which the next convocation is to be held is different; moreover in the summons to the council of London in 1283 *two* proctors of the clergy are specified, here *one or two*. Between the council of Reading and that of Northampton several were held in which the parochial clergy were not represented or were represented in another form.—On one of these councils (London, 1279) see Wilkins, *Concilia* II, 37: *Convocatur . . . , ut regi subsidium a clero praestetur. Soli episcopi hic summonentur ab archiepiscopo; inferiores vero clerici consilium suum de auxilio regi faciendo dioecesanis suis episcopis communicare, aut procuratores ea de re tractaturos constituere jubentur.* As to a second cf. the archiepiscopal summons of 30th July, 1281, to the council of Lambeth, 1281, in *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77) I, 211 and in Wilkins, *Concilia* II, 50: . . . *mandamus, quatenus . . . coepiscopos . . . nostros universos, nec non abbates, priores electivos, exemptos et non exemptos, decanos cathedralium et collegiatarum ecclesiarum, archidiaconos et capitulorum procuratores, citetis . . .* Peckham by summons dated 28th Dec. [1281], *Reg. Ep. Peckham* I, 256, invited only the bishops to a synod.

[37] On the assembly of Northampton cf. § 21, note 17. The king's commission

the archbishop, on the 21st January, 1283, invited a new provincial council to meet at London and summoned to it for the first time expressly *two* proctors to represent the inferior clergy of each diocese.[38] The constitution of the council as contemplated in the summons to the council of London in 1283, and also in the royal summonses for the national council of 1294 and the parliament of 13th November, 1295,[39] has been preserved in the main—apart from the later extinction of monastic representatives—in the provincial council of Canterbury down to the present time.

The convocation of the province of York attained to fixed form about the end of the thirteenth century. Membership was governed as in the convocation of Canterbury, with the difference, however, that in York for each archdeaconry two representatives of the parochial clergy were summoned to convocation.[40] [41]

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to each of the archbishops had been: . . . *suffraganeos vestros et abbates, priores et alios singulos domibus religiosis praefectos, necnon et procuratores decanorum et capitulorum ecclesiarum collegiatarum . . . venire faciatis coram nobis* . . . Stubbs, *Sel. Ch.* 466.—Similar refusals to grant taxes of the property of those not represented had already occurred in 1240 (cf. above, note 30) and 1254 (cf. § 21, note 13).

[38] *Quoniam in congregatione . . . habita Northamptoniae . . . tum propter absentiam maximae partis cleri tunc temporis modo debito non vocati, tum propter alia diversa, ad plenum non potuit responderi; de communi omnium tunc praesentium consilio extitit ordinatum, . . . quod clerus totus Cantuariensis provinciae . . . congregetur. Quocirca . . . mandamus, quatenus . . . episcopos Cantuariensis ecclesiae suffraganeos omnes et singulos, necnon abbates, priores ac alios quoscunque domibus religiosis praefectos, exemptos et non exemptos, decanos ecclesiarum cathedralium et collegiatarum, ac archidiaconos universos per Cantuariensem provinciam constitutos citetis, . . . quod compareant coram nobis . . . seu conveniant . . . Londoniis a die Paschae in tres septimanas . . . Singuli insuper episcopi, sicut in dicta congregatione provisum fuerat, citra diem praedictum clerum suae dioecesis in aliquo loco certo congregari faciant, et eidem quae ex parte regis nobis proposita fuerant diligenter exponi procurent, ita quod ad dictos diem et locum Londoniis de qualibet dioecese duo procuratores nomine cleri, et de singulis capitulis ecclesiarum cathedralium et collegiatarum singuli procuratores sufficienter instructi mittantur, . . . Registrum Epist. Peckham* (*Rer. Brit. Scr.* No. 77) II, 508; cf. also II, 523, 536, 594.

[39] Stubbs, *Sel. Ch.* 480 and above, § 21, note 19. To the intervening parliament, which met on the 15th August, 1295, deputies from the counties and of the inferior clergy were not summoned. Stubbs, *Const. Hist.* II, 133 c 14 § 180. —In 1297 the archbishop summoned, besides the usual members, the precentors, chancellors and treasurers of the cathedral chapters. Stubbs, *Sel. Ch.* 488.—In other cases also, for as long as a century after this time, minor irregularities occur.

[40] The summoning of two representatives from each archdeaconry has a precedent in 1279. Summons of the archbishop of York to an archdeacon, 1279 (Wilkins, *Concilia* II, 41): . . . *quod quilibet archidiaconus pro subsidio domino regi faciendo suos subditos convocabit, vota et liberalitates super hoc attentis et votivis inductionibus scrutaturus; ita quod die Veneris prox. ante festum sanctae Scholasticae virginis, quilibet archidiaconus cum duobus dignae eminentiae viris, et unico ipsius archidiaconatus decano, nobis apud Pontemfract. ubi personaliter erimus, Deo dante, responsum pro communitate totius archidiaconatus faciat;* . . .—In the northern province deviations

Almost simultaneously began the separation of convocation, which hitherto had been one body, into different deliberative houses.[42] A precedent for such division is found at the legatine council of Winchester, 7th of April, 1141, where the legate consulted separately the bishops, the abbots and the archdeacons.[43] The clergy invited to the parliament of 1296 resolved themselves for the purpose of deliberation into four parties: the bishops, the monastic representatives, dignitaries (*omnes in dignitatibus constituti*, deans, archdeacons and so forth), chosen representatives of the clergy (*omnes procuratores communitatis cleri*).[44] The same division was observed in the synod at St. Paul's, 14th of January, 1297.[45] But even in the ensuing period the general rule was deliberation in common; it was not from the first but by gradual process and for particular subjects of discussion that separation took place; moreover, the deliberative body to which the various kinds of members belonged was only determined by degrees.[46] Not until the beginning of the thirteenth

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from the normal constitution of the synod occur down to the time of the reformation.

[41] Cf. § 55 for the present constitution of the provincial councils of Canterbury and York. A list of those summoned in the fifteenth and eighteenth centuries to the convocation of Canterbury, in the fifteenth, sixteenth and seventeenth to the convocation of York, will be found in Wilkins, *Conc.* I (*Dissertatio de veteri et moderna Synodi Anglicanae Constitutione*) pp. xi ff., of those in the prov. synod of Canterbury after the dissolution of abbeys, in Joyce, *Sacred Synods* 450. Rural deans are not mentioned as members of the provincial synods. (Contrary opinion, without proofs, in Kennet, *Paroch. Antiq.* Ed. 1818, II, 364) The *archipresbyteri* sometimes mentioned probably signify here the deans of cathedral or collegiate churches. Joyce 290.—On the chapters of the monastic orders cf. Stubbs. *Const. Hist.* II, 203 f. c 15 § 198.

[42] For what follows compare Joyce, *Sacred Synods* 294 ff., 307.

[43] Narrative of William of Malmesbury, who was present, *Hist. Nov.* (*Rer. Brit. Scr.* No. 90) Book III § 492: . . . *sevocavit in partem legatus episcopos, habuitque cum eis arcanum consilii sui; post mox abbates, postremo archidiaconi convocati;* . . .

[44] Bartholomaeus de Cotton, *De Rege Edwardo I* (*Rer. Brit. Scr.* No. 16) 314.

[45] Barth. de Cotton, *l.c.* 317. Cf. also answer of the *clerus* and prelates of Canterbury to four *articula a rege petita* in the year 1298 (Wilkins, *Concilia* II, 236): . . . *E nous mentenant sour cestes prieres par chescun degre du clerge par eux, sicome costom est, estreytement counseillames* . . .

[46] For example, at the council of *London*, 1370, by desire of the archbishop the inferior clergy twice withdrew to deliberate apart: 11 *Kal. Febr. Rogavit* (the archbishop) *dictos Religiosos, quod se insimul traherent ad aliquam partem Ecclesiae et Clerum suae Dioeceseos et Provinciae quod ad aliam partem eiusdem Ecclesiae se traherent, tractarent et deliberarent.* 4 *Kal. Febr. Iniunxit hoc modo Procuratoribus Cleri et religiosorum exhortando eosdem quod se ad partes* . . . *transferrent* (Wilkins III, 82); 1376, on two days *dominus cum confratribus suis, exclusis omnibus aliis personis secrete deliberavit* (Gibson, *Synodus* 79, Ed. 1854 p. 60); 1379: *Praecepit* (the archbishop) *quod procuratores praedicti exirent* (Gibson, *l.c.* 80, Ed. 1854 p. 61); at the council of *London*, 1399: *tractabant ipse dominus et reverendi patres, episcopi antedicti, per se de negotiis omnibus ecclesiae; aliis praelatis et procuratoribus cleri seorsim separatis* (Wilkins III, 239); and similar cases.

In 1428 we find, as an exceptional case, the separation of the bishops from the lower prelates: *Aliis Praelatis ad tunc ibidem in multitudine copiosa*

century did the development alike in the provincial synod of Canterbury and in that of York culminate in the arrangement that, after the joint session at opening, only bishops and abbots should remain behind as an 'upper house' whilst all the rest who had appeared withdrew to deliberate and resolve apart as a 'lower house' of convocation. But in particular and suitable cases joint discussion took place even at a later time (*e.g.* in proceedings before the synod sitting as a heresy court), and a survival of this usage has remained down to the present day.[47]

As the councils of the church gradually succeeded in excluding the laity from all participation, there grew up, in connexion with that exclusion and with the severance of the clergy and the laity in other domains, the idea that the church synods were a separate representation of the clergy and could as such claim equal rank with parliament, the representation of the laity. The idea was novel; at an earlier time both the temporal assembly and the spiritual council had been regarded as representative of the whole people (clergy and laity); only, the spiritual council had had its particular field of competence. The development of the new view was much assisted by the introduction of elective representation of the inferior clergy and the temporary admission of this element to parliament. The endeavour to occupy a position on a level with that of parliament also found expression in the synod's resolution of itself into two houses, an upper and a lower, and in similar external imitations of the national assembly.[48]

Full equality with parliament the church councils at no time attained. This was prevented by the fact that the prelates remained members of the house of lords. Another impediment may possibly be found in the circumstance that, as against the one parliamentary body, there were as a rule two separate church provincial councils, whilst a national church council could not often be called owing to the jealousy of the archbishops and the disputes which arose therefrom.[49] Nevertheless, from the new view as to the nature of church

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existentibus, de mandato Praesidentium se interim retrahentibus . . . (Gibson, *Synodus* 79, Ed. 1854 p. 60); so on 15th and 17th Nov. 1529 (Wilkins III, 717).—For York cf. council in 1426 (Wilkins III, 487); joint deliberation as heresy court; resolution into two houses when discussing other subjects; *mandavit, ut praelati et clerus seorsim se diverterent et* . . . *contractarent.* According to Joyce, *Sacred Synods* 304, in York the bishops alone, as 'presidents,' formed the upper house, the whole of the rest of the clergy the lower house.

[47] Cf. § 55, near note 16.

[48] Gibson, *Synodus* 79 (Ed. 1854 p. 60), denies that the separation into upper and lower house is based on an imitation of parliament, for this separation only assumed a fixed form by degrees and had practical considerations to recommend it.—Yet, it must be supposed that the parliamentary model had considerable influence.

[49] Stubbs, *Const. Hist.* II, 208 c 15 § 199.—For a list of instances of non-legatine national councils see Joyce, *Handbook of Convocations* pp. 112 ff. He mentions five under Lanfranc, also councils in 1100, 1102, 1127, 1129, 1139, 1151, 1166, 1182, 1184, 1186, 1189, 1206, 1241, 1258, 1291, 1294, 1537, 1540 (1563), (1661). But some of these cannot be regarded as ecclesiastical national councils.

councils inferences were drawn which, to a certain extent, have their effect upon law at the present day.

These inferences were that the church councils had the right to grant taxes on the property of the clergy,[50] that the latter could not elect or be elected to the house of commons,[51] and lastly that the resolutions of church councils, even if confirmed by the king, bound the clergy only, not the laity also.[52]

The convocations in the period from the thirteenth century to the reformation exercised, owing to the spiritual powers united in them, a very considerable influence on the whole state: they were able by a liberal employment of ecclesiastical methods of coercion to procure obedience to their resolutions—which they did not submit to the king for ratification—even from the laity; in virtue of their right to determine the taxes to be paid from the ecclesiastical property of the clergy to the state,[53] they were in a position to exert constant pressure on the government; with the revival of religious controversies they joined issue with the champions of the new doctrines and took part in the prosecution of the innovators, clerical or lay.[54]

The reformation diminished the powers of the convocations more or less in all the directions indicated.

The first and most material diminution was caused by the act touching the submission of the clergy, 25 *Hen. VIII* (1533/4) c 19. This statute laid down, in essential agreement with a resolution of the convocation of Canterbury,[55] that the royal command was requisite before a convocation could meet, and that constitutions, canons etc. of what sort so ever could be made or executed only with the king's assent and licence.[56] It was repealed by 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 3; but revived by 1 *Eliz.* (1558/9) c 1 s 2. It is still in force.

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[50] Cf. § 4, near notes 72 ff.

[51] Cf. § 21, near notes 42 ff.

[52] Cf. § 14, note 16.

[53] The clergy at that time paid nearly one-third of all the direct taxes of the country. Stubbs, *Const. Hist.* III, 378 c 19 § 405.

[54] Cf. § 19, note 17.

[55] See more in § 6, note 10.

[56] *An Acte for the submission of the Clergie to the Kynges Majestie.* The enacting part runs: s 1 . . . *be it therfore now enacted by auctoritie of this present parliament accordyng to the seid submyssyon and peticion of the seid Clergie, that they ne any of theym from hensforth shall presume to attempte allege clayme or put in ure any constitucions or ordynances provynciall or Synodalles or any other canons, nor shall enacte promulge or execute any suche canons constitucions or ordynaunce provynciall, by what soo ever name or names they be called in theire convocacions in tyme commyng, which alway shalbe assembled by auctorytie of the Kynges wrythe, onles the same Clergie may have the Kynges most Royal assent and lycence to make promulge and execute suche canons constitucions and ordynaunces provynciall or Synodall* . . .

The provision is not quite accurately framed; it varies in some details from the declaration of submission made by the southern convocation, and, compared with that declaration, leaves it in particular doubtful whether the restrictions are also to apply to *diocesan* synods and whether, besides precedent licence, subsequent assent was also to be required.

In regard to the former of the two doubtful points, previous royal command

The submission act destroyed the independence of convocation as a legislative body. In the two other chief fields of its activity the restrictions imposed were at the outset less considerable:—

In the years 1540, 1542 and 1545 we find, for the first time, that grants of taxes by convocation were confirmed by parliament.[57]

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was surely not required for the summoning of diocesan synods (the sense necessitates a comma at the place where the * is); from the wording of the act it is to be assumed that assent and licence were also not required for any proceedings at a diocesan synod, but only for the further pursuance of resolutions of a diocesan synod ('any other canons') in convocation.

As to the second point, the declaration of submission by convocation runs as follows: *only your highness by your royall assent shall lycence us . . . to make, promulge, and execute . . . , and thereto give your . . . assent and authorite.* The preamble of the act gives as the purport of the declaration: . . . *unless the Kynges . . . assente and lycence may to them be had, to make, promulge, and execute . . . , and that hys Majestie doo geve hys . . . assente and auctorytie in that behalf.* Comparing this with the act as quoted, we must infer that the enacting part of the statute does not require subsequent assent on the part of the king. The view here taken is also maintained in a report of the *Committee of Privileges* of the lower house of Canterbury in 1873, printed in appendix to *Chron. of Conv. Cant.* 1873.—Independent hereof are the questions whether the crown can generally in virtue of the supremacy act require canons to be submitted to it for approval, whether it may give precedent licence as a licence conditioned by reservation of a right to subsequent assent, lastly, whether it may in virtue of the original declaration of submission by the southern convocation, wherein subsequent assent is expressly conceded, demand and enforce the obtaining of such assent. Practice in the last centuries with regard to the administration of the law has rested on an opinion given by a committee of judges at the request of the house of lords in *Trin.* 8 *Jac. I* (1610). According thereto the sense of the act should be (Coke, *Reports* XIII, 72):—

1. *That a Convocation cannot assemble at their Convocation without the assent of the King.*
2. *That after their assembly they cannot confer to constitute any Cannons without license del Roy.*
3. *When they upon conference conclude any Cannons, yet they cannot execute any of their Cannons without Royall assent.*
4. *They cannot execute any after Royall assent, but with these four limitations:—*
    1. *That they be not against the Prerogative of the King.*
    2. *Nor against the Common Law.*
    3. *Nor against any Statute Law.*
    4. *Nor against any Custome of the Realm.*

According to Joyce, *Handbook of the Convocation* p. 174, a special royal 'assent' to canons after their enactment (see No. 3 in opinion of judges) was first issued in 1598. (On the 25th Jan. 1598, the archbishop laid the deed of ratification before convocation. Cardwell, *Synodalia* 580.) According to Trevor, *Convocations* pp. 161 ff. a special 'licence' (see No. 2 in opinion of judges) was first granted in 1604. (For the southern province Cardwell, *Synodalia* 584; for the northern province document of 18th Feb. 1606, in Wilkins, *Conc.* IV, 426.)—On the procedure observed in 1865, 1887–88 and 1892 cf. § 55, note 25.

[57] *Journal of Lords* I, 156 (relates to 1540), 218 (1542), 277 (1545); cf. Phillimore, *Eccles. Law* 1930ᵐ.—A precedent from earlier times is furnished by 18 *Ed. III* (1344) st. 3, which, however, only mentions a grant by the clergy as one of the considerations for certain concessions made by the king to them.—On further attempts of parliament in the fourteenth and fifteenth centuries to influence the clergy in their grants see Stubbs, *Const. Hist.* III, 349 c 19 § 396, II, 470 c 16 § 263, II, 489 f. c 16 § 265, III, 147. 271 c 18 §§ 344, 370.

The particular circumstances which caused the innovation are not known. The new practice continued to be the rule[58] until the year 1640. From the beginning of the first revolution the clergy were called upon by parliament to contribute to poll-taxes and to land-taxes on ecclesiastical possessions.[59] After the restoration in a single

[58] The following are the acts printed in *Statutes of the Realm* touching ratification by parliament of subsidies granted by convocation: 32 *Hen VIII* (1540) c 23; 34 & 35 *Hen. VIII* (1542/3) c 28; 37 *Hen. VIII* (1545) c 24; 2 & 3 *Ed. VI* (1548) c 35; 7 *Ed. VI* (1552/3) c 13; 2 & 3 *Phil. & Mar.* (1555) c 22; 4 & 5 *Phil. & Mar.* (1557/8) c 10; 5 *Eliz.* (1562/3) c 29; 8 *Eliz.* (1566) c 17; 13 *Eliz.* (1571) c 26; 18 *Eliz.* (1575/6) c 22; 23 *Eliz.* (1580/1) c 14; 27 *Eliz.* (1584/5) c 28; 29 *Eliz.* (1586) c 7; 31 *Eliz.* (1588/9) c 14; 35 *Eliz.* (1592/3) c 12; 39 *Eliz.* (1597/8) c 26; 43 *Eliz.* (1601) c 17; 3 *Jac. I* (1605/6) c 25; 7 *Jac. I* (1609/10) c 22; [18 & 19 *Jac. I* (1620/1 and 1621/2) c 2, text not preserved]; 21 *Jac. I* (1623/4) c 34; 1 *Car. I* (1625) c 5; 3 *Car. I* (1627) c 7; 15 *Car. II* (1663) c 10.

The only known exceptions are:—

1. In 1587 the southern (on 4th March; Wilkins, *Conc.* IV, 322; document in Cardwell, *Synodalia* 566) and the northern convocation (on 9th March; document in Wilkins, *Conc.* IV, 323 f.) granted a *benevolentia*. Cf. the following confirmation by the queen, dated 9th March, 1587, and having reference to the province of Canterbury (in Rymer, *Foedera* 3rd Ed. VII, Pt. 1 p. 4):—

Regina, etc. Omnibus ad quos, etc. Salutem.

Cum Praelati et Clerus Cantuariensis Provinciae, nostra Authoritate in Synodo suo seu Convocatione congregati, ex intima et propensa Animorum suorum affectione quam erga nos gerunt, ultra et praeter Subsidium sex Solidorum, singularum Librarum annuarum, etiam quandam benevolam Contributionem trium Solidorum pro singulis Libris annuis, omnium et singulorum Beneficiorum suorum Ecclesiasticorum et Promotionum Spiritualium quorumcumque, ac omnium Possessionum et Reventionum eisdem annexarum seu quovismodo spectantium et pertinentium dederint et concesserint, . . . ;

Sciatis igitur quod nos . . . praefatam benevolae Contributionis Concessionem acceptamus, approbamus, ac eandem confirmamus, ratificamus et stabilimus, . . .

A similar confirmation in reference to the province of York is found in Wilkins, *Concilia* IV, 324.

2. In 1640 the southern (22nd to 24th April, Wilkins, *Conc.* IV, 533) and the northern (8th June, Wilkins, *Conc.* IV, 553) convocation granted a *benevolentia*.

3 According to Carwithen, *Hist. of Ch. of England* III, 110, note, Charles II received from the clergy in 1661 a free gift of £33,743.

[59] So even in acts promulgated by the king: 16 sq. *Car. I* (1640 ff.) c 9 for the speedy provision of money for disbanding the armies and settling the peace of the two kingdoms. A poll-tax graduated according to rank is imposed. (On earlier instances of poll-taxes cf. Vocke, *Geschichte der Stevern des britischen Reichs*, Leipzig, 1866, pp. 505 ff.) In s 2 the amounts are specified which fall on the various classes of the clergy. 16 sq. *Car. I* (1640 ff.) c 32 *An Act for the raising and leavying of Moneys for the necessary defence and great affaires of the kingdomes of England and Ireland and for the payment of debts undertaken by the Parliament*, specifies in s 4 the lands etc. from which the tax is to be raised. The limitation contained in previous acts (*e.g.* 29 *Eliz.* c 8 s 5, 3 *Car. I* c 8 s 2) touching parliamentary subsidies, 'Landes and Tenementes chargeable to the Dismes of the Clergie . . . excepted,' is omitted. But the condition is retained which in the earlier acts accompanied that limitation, as to the non-taxing of *all goods chattels and Ornaments of Churches and Chappels whiche have been ordained and used in Churches and Chappells for the honour and service of Almighty God.* In s 10 it is then enacted: . . . *that every spirituall person . . . shall be rated . . . according to the rate abovesaid of and for every pound that the same spirituall person . . . hath in any Mannors Lands Tenements Rents Services Offices Fees Corodies Annuities Tithes and Hereditaments ecclesiasticall or temporall as well in right of theire*

instance (1663) we again find the granting of a tax by convocation with confirmation by parliament.[60] In 1665 the clergy, by verbal agreement between the then lord chancellor and the archbishop, practically surrendered their claim to be taxed by convocation. From that time ecclesiastical property was taxed by parliament. But, in form, respect was paid in the various money acts to the ancient rights of the lords spiritual and the clergy.[61] Since the year specified convocation has never exercised any taxing powers.

Churches as otherwise. . . . The marginal note thereto in *Stat. of the Realm* runs: *Spiritual Persons how rated for Temporal Possessions.* The limitation so made seems, however, erroneous. The corresponding passage in the earlier acts (*e.g.* 29 *Eliz.* c 8 s 10, 3 *Jac. I* c 26 s 10, 3 *Car. I* c 8 s 11) runs: . . . *that every Spirituall person* . . . *shalbe rated* . . . *for every pound that the same spirituall person* . . . *hath by discent bargaine or purchase in Fee simple or Fee taile terme of life terme of yeres by execucion wardshipp or coppie of Court Roll in any Mannors landes tenementes rentes services offices fees corrodies annuities and Hereditamentes.* . . .

[60] 12 *Car. II* (1660) c 9 contains the grant of a graduated poll-tax. s 2 prescribes the amount to be paid by vicars and rectors with benefices worth £100 annually.—12 *Car. II* c 28 s 1: . . . *and also that every person and persons ecclesiasticall and temporall* . . . *shall pay for their estates both reall and personall* 50 *sh. p.* £100, *and for every* £100 *personall estate after the rate of* £5 *per annum.* . . . Special exemption of ecclesiastical possessions is not made in the act.—12 *Car. II* c 29 grants £70,000. s 3 enacts: . . . *that noe Mannors Landes Tenements and Hereditaments which were formerly assessed and taxed for and towardes former assessments and Land taxes and are now in the possession or holding of his Majestie* . . . *or of any ecclesiasticall person* . . . *shall be exempted from the payment of the severall summes of money in this Act comprised,* . . .—13 *Car. II* (1661) st. 2 c 3 contains a grant of £1,260,000 (*the ancient* . . . *course of raising moneyes* . . . *hathe beene by way of subsidies which wee desire may bee observed in future times;* . . . *the way of subsidies hath for many yeares last past been disused*). According to s 5 the sum is to be raised by assessments of all lands etc. in each parish. The act makes no exception as to ecclesiastical possessions, but in s 28 is the reservation *Provided alsoe That nothing herein contained shall be drawn into example to the prejudice of the ancient rights belonging unto the Lords Spiritual and Temporal or Clergy of this Realm.* . . .—14 *Car. II* (1662) c 10 imposes a hearth-tax without exempting ecclesiastical possessions.—15 *Car. II* (1663) c 9 contains the grant of four temporal subsidies with the clauses customary before the revolution in respect to church property. c 10 contains the confirmation of four subsidies by the clergy.

[61] 16 & 17 *Car. II* (1664/5) c 1 contains a grant of £2,477,500, to be raised in three years. According to s 5 all 'Estates reall and personall' within the several parishes are to be assessed. There is no general exemption of ecclesiastical possessions. By s 21 the universities and some schools and hospitals are relieved from the necessity of contributing. s 30 runs: *Provided alwayes and be it enacted* . . . *That all Spirituall Promotions and all Lands Possessions or Revenues annexed to and all Goods and Chattels growing or renewed upon the same or elsewhere appertaining to the Owners of the said Spirituall Promotions or any of them which are or shall be charged or made contributary by this Act towards the Payments aforesaid dureing the time therein appointed shall be absolutely freed and discharged from the two last of the fower Subsidyes granted by the Clergy to His Majestie* . . . *by* 15 *Car. II* c 10. The reservation is contained in s 36: *Provided alwayes That noe thing herein contained shall be drawne into example to the prejudice of the Auntient Rights belonging unto the Lords Spirituall and Temporall or Clergy of this Realme or unto either of the Universityes or unto any Colledges Schooles Almeshouses Hospitalls or Cinque Ports.* (Cf. 13 *Car. II* (1661) st. 2 c 3 s 28, in note 60.)

The powers of the convocations to co-operate in the prosecution of heretics were, in their legal scope, left unaffected by the reformation. But in practice, from the reign of Elizabeth onward such prosecutions took place but seldom. Moreover, doubts soon arose as to the kind of co-operation convocation was entitled to exercise. It is, at any rate, not known that after 1534 it ever pronounced sentence on the person of a heretic. In 1711 the convocation of Canterbury desired to proceed against Whiston, a professor of mathematics in Cambridge; whether it was capable of doing so was a question upon which the opinions of the highest judges and the crown lawyers was taken. The minority answered in the negative on the ground that convocation by citing the accused before it would be arrogating to itself the functions assigned by statute to the bishops' courts; the majority, on the other hand, pronounced in favour of convocation.[62] As, however, further doubts arose whether the lower house of Canterbury had the right to co-operate and whether the convocation of York should be invited to assist, convocation abstained from proceeding against the person, and contented itself (in accordance with procedure in similar cases since the reformation [63]) with condemning certain doctrines in Whiston's book as heretical. No attempt on the part of convocation to proceed against a *person* for heresy has been made since Whiston's case;[64] on the other hand, a book was again in 1864 condemned by the upper and the lower house of Canterbury as containing heretical doctrines.[65]

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[62] The opinions are printed in Wilkins, *Conc.* IV, 648.

[63] For a collection of these cases see the report of a committee of the lower house of Canterbury, 1865. *Chron. of Conv. Canterbury* p. 2111.

[64] For judgments which touch the question whether the right so to proceed still exists see Phillimore, *Eccles. Law* 1960[2]. He denies its existence and holds that now the *Church Discipline Act* of 1840 (3 & 4 *Vict.* c 86) s 23 would have to be taken into account. That act only regulates procedure against clergymen for offences against *ecclesiastical laws*.

[65] On the 21st June, 1861, the lower house of Canterbury resolved: *That in the opinion of this house there are sufficient grounds for proceeding to a Synodical judgment upon the book called 'Essays and Reviews.'* The upper house on the 9th July, 1861, voted a postponement of further measures, because proceedings were pending against some of the authors before the ecclesiastical courts. These proceedings having ended in acquittal, convocation returned to the subject, and the upper house, the lower concurring, declared: *That this Synod, having appointed committees of the Upper and Lower Houses to examine and report upon the volume entitled Essays and Reviews, and the said committees having severally reported thereon, doth hereby synodically condemn the said volume, as containing teaching contrary to the doctrine received by the United Church of England and Ireland, in common with the whole Catholic Church of Christ.* (Resolution of upper house, 22nd June, of lower house, 24th June, 1864. *Chronicle of Convocation of Canterbury* pp. 1683, 1830.) The resolutions were not signed by the archbishop as president, and ratification by the crown was not requested. In view of this it was in some quarters contended that they could not be regarded as the valid judgment of the synod. (*Chron. of Conv. Cant.* 1865, pp. 1915 etc.—Cf. also *l.c.* pp. 2324 f.)—Meanwhile convocation had also proceeded against bishop Colenso's book, published in London, *The Pentateuch and the Book of Joshua critically examined.* Upper house and lower house declared: *That the said book does . . . involve*

Apart from the limitations indicated, the convocations under Henry VIII and the succeeding sovereigns continued their activity in the accustomed manner. During the first revolution (1640–60) their sessions could not be held, but were resumed immediately after the restoration of the monarchy.

James II summoned in 1685 the convocations of Canterbury and York; fearing, however, opposition to his measures in favour of the papists, he prorogued the convocation several times and in 1687 dissolved it. Whether the convocation of York actually met or not, is unknown.[66] In 1689, contrary to usage, no convocation assembled when parliament met. The government of William and Mary laid before parliament a toleration bill and a bill which aimed at conciliating the protestant dissenters by means of certain modifications in the arrangements of the established church. The toleration act was passed; on the other hand the house of commons declined to discuss the second bill, and voted an address to the crown praying that, in accordance with old custom when parliament was sitting, convocation might be summoned to advise the crown in ecclesiastical matters.[67] The prayer was granted. The attempt, however, to effect changes acceptable to the dissenters broke down in consequence of the attitude of the lower house of Canterbury. The opposition shown had the result that the latitudinarian archbishop Tillotson (1691–4) and at first archbishop Tenison (1695–1715), who belonged to the same school, did not allow their convocations to deliberate but prorogued them immediately after their meeting. The same thing happened in the province of York.[68] Such a course had been rendered possible by the fact that the power of granting taxes had passed to parliament. The dissatisfaction excited by the continued prorogations led to a controversy upon the rights of the convocations, particularly of the lower house. One party was headed by Atterbury, the other by Wake, afterwards archbishop of Canterbury (1716–37). Atterbury championed the equality of con-

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errors of the gravest and most dangerous character, subversive of faith in the Bible as the Word of God, and warned those who were unable to read the answers thereto of its dangerous character. A formal judgment of the synod was not taken, as proceedings were contemplated in the ecclesiastical court. (Resolutions of the upper and lower house, 20th May, 1863. *Chron. of Conv. Cant.* pp. 1204, 1237. Cf. also the report of the committee of the lower house, *l.c.* p. 1181, in which the reservation is made that in spite of the reprobation of the book then concerned, in principle, the application of the scientific method to the study of the Bible appeared desirable.)—In 1868 convocation deliberated on proceeding against Voysey's book. *Chron. of Conv. Cant.* 1868, pp. 1418 etc. —In 1891 the lower house of Canterbury rejected a motion to appoint a committee to prepare the condemnation of *Lux Mundi*. *Chron. of Conv. Cant.* 1891, pp. 7, 77.

[66] Wilkins, *Concil.* IV, 612.

[67] The upper house concurred in this address: *We likewise humbly pray that, according to the ancient practice and usage of this kingdom in time of parliament, your majesty will be graciously pleased to issue forth your writs, as soon as conveniently may be, for calling a convocation of the clergy to be advised with in ecclesiastical matters.* (Printed in Lathbury, *Convoc.* 321.)

[68] More in Wilkins IV, 619, 621, 625.

vocation with parliament, claiming, in particular, for the lower house an independence of the archbishop and the upper house corresponding to the independence of the house of commons; Wake opposed these pretensions. In 1701 the convocation of Canterbury was again allowed to deliberate.[69] But disputes at once broke out between the lower and the upper house, the former endeavouring to act in accordance with Atterbury's theories. These disputes recurred at all the meetings in the following years. They turned mainly on questions as to the ordering of business, the lower house systematically endeavouring to set at nought the archbishop's directions to adjourn. Nevertheless, long prorogations were repeatedly enforced. The quarrel, beginning about formalities, was accentuated by the fact that the majority in the upper house was liberal in politics and religion, whilst the lower house was orthodox and tory. In 1717, Hoadly, bishop of Bangor, preached before the king a sermon which evoked the hostility of the high church party. The lower house of Canterbury thereupon voted a 'Representation' to be transmitted to the upper house, attacking the doctrines of Hoadly. The answer of the Whig ministry to this decision was to order the prorogation of convocation.

Both the government and the bishops being weary of the difficulties constantly raised by the lower house, proposals ceased to be laid before convocation by the ministry, licence to debate new canons was not granted, and by repeated prorogations its discussions were almost entirely stifled. Only in 1741 and 1742 were attempts once more made in the convocation of Canterbury to consider certain subjects.[70] Subsequently no real deliberations took place for more than a hundred years. During all that time simultaneously with the summoning of parliament went forth the royal instruction to the archbishops to call the convocations together; the archbishops called them; proctors of the beneficed clergy were chosen; the convocations met—for the most part, indeed, the attendance was sparse—passed complimentary addresses, couched in formal language, to the crown, and were at once prorogued.[71]

The steady maintenance of the old form rendered it possible, without any new legislation being requisite, to restore really active church synods when, towards the middle of the nineteenth century, a not inconsiderable part of the people judged such restoration desirable. All that was needed in the first instance was to abandon the practice of immediate prorogation. Reanimation ensued by

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[69] The last convocation mentioned in the York archives met in 1698. Wilkins IV, 625.

[70] See more in Lathbury, *Hist. of Convoc.* 464 ff.

[71] Warren, *Synodalia, A Journal of Convocation*, 1853 p. 2, effectively describes the state of affairs in the first half of the 19th cent.: . . . *churchmen, excepting only a few antiquarians, knew only of this Synod that it had once been active; but that of late a few clergymen, chosen they knew not how, met two or three bishops they knew not when, and presented an address to the Crown, for what purpose they could not tell.*

slow degrees.[72] In 1847 the first important discussion in the revived convocation of Canterbury was held, and that in connexion with motions upon the address; in 1852 committees were appointed to consider various questions, and since then, with gradual increase in the scope of its activity, the convocation of Canterbury has again become a regular deliberative assembly. The convocation of York began in 1859 to follow the example set it. In 1861, for the first time after the interval, the crown again conferred on the convocation of Canterbury permission to make canons, and shortly afterwards gave the same licence to the convocation of York.[73] The canons then contemplated were not passed; but in 1865, 1887 and 1892 the first by the revived assembly were agreed.[74]

§ 55.

The provincial convocations of the present day.

Each of the two convocations, that of Canterbury and that of York, falls into an upper and a lower house. In the upper house the archbishop acts as president whilst the diocesan[1] bishops sit as assessors. The archbishop is also president of convocation.[2] The lower house consists of the deans of the cathedral churches (in Canterbury also of the deans of the collegiate church of Westminster and of the royal free chapel of St. George's, Windsor), the archdeacons,[3] a proctor for each chapter[4] and proctors for the inferior clergy. In the province of York, as the assembly would otherwise be too small, two representatives (in some cases one[5]) of the inferior clergy are chosen for each archdeaconry; in the province of Canterbury only two proctors are returned for each diocese.[6] Only the beneficed

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[72] See more, *e.g.* in Perry, *Hist. of Engl. Ch.* III, 292 ff., 325 ff. cc 16 and 18. The resumption of deliberations was for long prevented by the wide-spread view that the royal licence was requisite for all forms of deliberation, not solely for the making of canons.

[73] Cf. the royal licence and the correspondence in connexion therewith in *Chron. of Conv. Cant.* 1865, pp. 2403 ff., also *l.c.* 1867, pp. 906, 977.

[74] The royal licence of 1865 is printed in *Chron. of Conv. Cant.* 1865, p. 2353. On the new canons cf. appendix XII, note 1.

[1] Suffragan bishops as such are not summoned to convocation; but if they are also deans of cathedral churches or (as frequently in recent times) archdeacons, they have taken their seats in the lower house. Phillimore, *Eccles. Law* 1938. Warren, *Synodalia*, 1853, p. 310. *Chron. of Conv. Cant.* 1870, p. 44.

[2] Exceptionally, other persons may also preside; so in the province of Canterbury, if the archbishop's see is vacant the bishop of London will preside (ex.: convocation of 1604); the king or his representative appears to be entitled to the presidency (cf. § 54, note 15).

[3] On the summons of the (titular) archdeacon of Westminster see *Journal of Conv.* (ed. Warren) 1857, p. 195.

[4] According to Joyce, *Synods* 720, the chapter of Rochester sends two proctors, that of Windsor, none.

[5] Joyce, *Synods* 733.

[6] Phillimore, *Eccles. Law* 1942. In some dioceses of the province of Canter-

clergy,[7] rectors and vicars, have been electors from ancient times. It seems, however, that by custom perpetual curates have been nearly everywhere admitted to vote.[8] The lower house chooses as its agent in communicating with the upper house a prolocutor,[9] who also presides in the lower house. He is presented to the archbishop and bishops for confirmation.[10]

The convocations are summoned by the archbishops in virtue of a royal instruction or authorization,[11] issued, in accordance with old usage, concurrently with the writs for assembling parliament. The sovereign has also the right to give mandate to the archbishop to dissolve [12] convocation or to prorogue it. The archbishop is bound to obey the order; but as in summoning, so in dissolving, in form he gives the declaration in his own name though with mention of the royal writ.[13] Even without such authorization the archbishop has as against the lower house the right of proroguing the convocation;[14] but it is disputed whether in proroguing on his own authority

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bury the two proctors are chosen by the assembled inferior clergy of the whole diocese; in others the election is indirect, the clergy of each archdeaconry choosing two persons, the persons so chosen meeting at the chief place in the diocese and sending two of their number as representatives of the diocese. In some places there is a third mode of election. Reports of Committees of the lower house, *Chron. of Conv. Cant.* 1865, p. 1860. *Chron. of Conv. Cant.* July, 1875, appendix.

[7] Opinion of vicar-general of Canterbury (Deane), 3rd March, 1883 in *Chron. of Conv. Cant.* 1884, appendix No. 154, p. 11.

[8] *Journ. of Conv.* (ed. Warren) 1857, p. 207.—The stipendiary curates are not entitled to vote. Report of a committee of the upper house in 1853 (*Journ. of Conv. Cant.* 1854, p. 14): . . . *there is no evidence to show that the votes of stipendiary Curates have ever been received at the election of Proctors to the Convocation in the Province of Canterbury.* Cf. further *Journ. of Conv.* 1857 p. 350.

[9] First mentioned in 1415. Phillimore, *Eccles. Law* 1943, after Hody, *History of Conv. 3rd Part*, p. 256.

[10] Private note of archbishop Parker, 1563: *Forma eligendi et praesentandi prolocutorem* (printed in Warren, *Synodalia* p. 16). Report of *Committee of Privileges* of lower house of Canterbury (No. 9 of the report. *Journ. of Conv. Cant.* 1854 pp. 24 ff.).

[11] In the southern province the archbishop avails himself by custom of the agency of the bishop of London as 'dean of the province.' The latter communicates the archbishop's orders to the bishops; each bishop in turn directs mandates to the clergy of the diocese. Examples of relevant documents from ancient and later times in Joyce, *Handbook of Convocations* pp. 121 ff.

[12] Whether the dissolution of parliament involved the dissolution of convocation was in 1640 disputed. The question was then answered in the negative by the lawyers. Cf. § 7, note 29. It is now accepted that convocation is dissolved by the death of the sovereign, as the commission given by the king acts only for his lifetime. The usage was otherwise before the submission act made royal authority absolutely necessary for the convening of a provincial synod. Phillimore, *l.c.* 1941.

[13] Phillimore, *l.c.* 1948. Wilkins, *Conc.* I, Introduct. p. 26. A writ to dissolve convocation, dated 26th Jan. 1874, is printed in *Chron. of Conv. Cant.* 1874, p. 2. A royal writ of prorogation and a royal writ of dissolution, both of 28th June, 1892, *l.c.* 1892, appendix.

[14] This is now also recognized in the report of the Committee of Privileges of the lower house of Canterbury (No. 8 of the report. *Journ. of Conv. Cant.* 1854, pp. 24 ff.).

he must act *cum consensu fratrum*, with the consent of the upper house.[15]

Deliberation and voting are separate in the two houses. As a survival, however, of the earlier practice of joint discussion, the custom is still observed of sitting together at the formal opening session, whilst, in special cases, resolutions to the same effect by both houses are subsequently and finally adopted by them both sitting in common.[16]

Every resolution of convocation needs for its validity the confirmation of the archbishop.[17] In cases which fall under the submission act, when, that is, the resolution presents itself as in execution of any ecclesiastical law (or minor regulation) or a new ecclesiastical law (or minor regulation) is to be established by it, precedent royal licence is necessary for a resolution to be discussed or to become operative. Furthermore, the king may reserve to himself subsequent approval of the resolutions; it is doubtful whether, even if no special reservation has been made, the subsequent approval of the king must be sought.[18] The king has also, apart from this, the right of assigning to convocation definite subjects for discussion.[19]

The privileges of the lower house of convocation are considerably more limited than those of the lower house of parliament. The right of decision in the case of disputed elections is vested in the archbishop; it is, however, a moot-point whether the lower house has also a concurrent and independent right of decision.[20] Again, it is the prevalent opinion that the lower house may not, on its own initiative, present to the upper house proposals for joint resolutions, but must wait until the archbishop or the upper house requires it to deliberate and frame resolutions on certain questions.[21] Neverthe-

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[15] Cf. Perry, *Hist. of Engl. Ch.* III, 301, 307 c 16 §§ 8, 13. Phillimore, *l.c.* 1939, 1947. Warren, *Synodalia* 42 ff. Cardwell, Introduction, pp. xli ff. to Gibson, *Syn. Angl.* Ed. 1854.

[16] Phillimore, *Eccles. Law* 1937, 1946.—The external forms of the course of business have come to be regulated in many respects by the private note of archbishop Parker, 1563: *Forma sive descriptio convocationis celebrandae, prout ab antiquo observari consuevit*, printed in Warren, *Synodalia* p. 11.

[17] Phillimore, *Eccles. Law* 1946.

[18] Cf. § 54, note 56.

[19] This is done by means of 'letters of business.' The first business laid before the revived convocation in this way was in 1872. On the letters of business since the reformation and on their text cf. Report of the 'Committee of Privileges' of the lower house of Canterbury, 1873, printed in append. to *Chron. of Conv. Cant.* 1873. See there also on the recent granting of a royal licence to deliberate on the business assigned, side by side with the letter of business. —Letter of business and royal licence of 1874 are printed in *Chron. of Conv. Cant.* 1874, p. 298. A letter of business was given in 1887. (Cf. below, note 25.)

[20] The report of the committee of privileges of the lower house of Canterbury (No. 1 of the report, *Journ. of Conv. Cant.* 1854, pp. 24 ff.) negatives this. Cf. also Phillimore, *Eccles. Law* 1943.

[21] Report of the committee of privileges of the lower house of Canterbury (Nos. 4 and 5 of the report, *Journal of Conv. Cant.* 1854, pp. 24 ff.). Resolution of the lower house of Canterbury, 14th May, 1889 (*Chron. of Conv. Cant.* p. xii). —At the beginning of the 18th cent. the lower house several times attempted such framing of resolutions on its own initiative. Cf. Perry, *Hist. of Engl. Ch.* II, 559, 568 c 37 § 15 c 38 § 12.

less, the lower house may deliberate and resolve upon petitions presented to it; it may, furthermore, on its own initiative, send up to the archbishop or the upper house or through them to other authorities *gravamina* or *reformanda*, and it may request that special matters may be laid before it.[22] A representation of this kind, whether it be addressed to the upper house or conveyed, when the upper house has declared its concurrence, to some other authority, is called by the general name *articulus cleri*.[23]

The convocation as a whole has a right to discuss ecclesiastical affairs and to pass non-binding [24] resolutions. Subject to the limitations of the submission act, it is also empowered to frame resolutions which, to a certain extent, are binding.[25] By 24 *Hen. VIII* (1532/3)

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[22] Phillimore 1944 and the report and resolution cited in note 21.

[23] Phillimore 1944. Hence the name of the *Articuli Cleri*, 9 *Ed. II* st. 1 (1315/6), wherein the several complaints made by the clergy are adduced *verbatim*, and the king's answer attached to each.

[24] If the forms prescribed by the submission act are not observed, the resolutions passed are to be regarded merely as expressions of opinion by the majority and not binding even on the clergy.

[25] On the interpretation of the act of submission cf. § 54, note 56.—The canons of 1865 were brought about thus: convocation in an address to the queen suggested the granting of a licence to alter the canons. The royal licence was issued with the reservation that subsequent approval under the great seal must be given to the alterations (licence in *Chron. of Conv. Cant.* 1865, p. 2353); the convocation passed the new canons (*l.c.* p. 2400); then approval was granted and promulgation effected by royal letters patent (not printed in *Chron. of Conv. Cant.*).—The genesis of the canons of 1887–8 was as follows: the queen sent a letter of business and a licence authorizing convocation to amend the canons and, as in the previous case, to submit the proposed alterations for approval (*Chron. of Conv. Cant.* 1887, p. 63); the convocation determined the wording of the new canons (6th–8th July, 1887) and begged the queen by an address dated 8th July, 1887, to grant them 'Royal Assent and Licence' to make, promulge and execute the canons according to the form annexed (*Chron. of Conv. Cant.* 1887, *Summary* pp. xix ff.). By letters patent of 16th Sept. 1887 (printed in *Chron. of Conv. Cant.* 1888, behind p. 2), the queen gave 'assent' and 'licence' in the following terms:—

Now know ye that We by virtue of Our Prerogative Royal and Supreme authority in causes Ecclesiastical Do hereby of our especial Grace give Our Royal Assent to such new and amended Canons so exhibited as aforesaid and We do allow the same and Do hereby grant unto . . . Edward White Archbishop of Canterbury President of the Convocation of the Province of Canterbury and to the rest of the Bishops and Clergy thereof Our Royal Licence to make promulge and execute the said new and amended Canons so exhibited as aforesaid . . .

Next the archbishop at an assembly of both houses of convocation read ('read, promulged and published,' *Chron.* 1888, p. 2) the canons as amended. At the same time a document (28th Feb. 1888; printed *l.c.* behind p. 2) was drawn up and signed by the members of both houses. It contains no express statement that it is a document touching the publication of the resolutions, but is worded:—

Constitutions and Canons Ecclesiastical treated upon . . . in . . . Synod . . . which Canons received the Assent of the Queen's Majesty . . .

Whereby the 62nd *Canon and the* 102nd *Canon . . . of* 1603 *are amended . . . and the said new Canons are as follows:—* (text follows).

We whose names are hereunder written being lawfully assembled together in . . . Synod . . . do hereby declare and testify our consent to the said Canons . . .

c 12 s 4 supreme ecclesiastical jurisdiction with regard to testaments, marriages, tithes or church dues in which the king had an interest was vested in the upper house of convocation. It has been decided that this power of jurisdiction was revoked by the provisions of 25 *Hen. VIII* (1533/4). The same jurisdiction now belongs to the judicial committee of the privy council.[26]

A claim is sometimes raised that, before the passing of acts of parliament touching ecclesiastical affairs, convocation should be heard in respect thereto.[27] But the necessity is not acknowledged in existing law or in existing usage.[28]

In 1892 a new canon was discussed by the convocations and the draft adopted. Then the queen was begged to grant the 'Royal Assent and Licence,' and the same forms were followed as in 1887, without convocation's again discussing and adopting the canon. Royal letters patent of 13th June, 1892, and the document relating to subscription of the canon by the clergy on 14th June, 1892 in *Chron. of Conv. Cant.* 1892, at back of p. 230. The document of 14th June cannot make amends for the absence of subsequent acceptance of the canon by convocation; for it only shows who agreed and not who (*e.g.* archdeacon Kaye; cf. *l.c.* p. 232) did not agree, and thus does not make it evident whether the assenting members in each of the two houses were in the majority. So far as can be seen, this time neither letter of business nor precedent licence to frame a resolution was granted. This mode of procedure observed in 1892, according to which the sovereign is confined to giving *subsequent* assent to a canon already discussed and resolved, appears in conflict with the declaration of submission and the submission act (cf. also No. 2 of the opinion of the judges in 1610, printed § 54, note 56).

[26] Cf. § 62.

[27] From the reformation period cf. the resolution of the lower house of the convocation of Canterbury, 22nd Nov. 1547 (see § 21, note 29). From later times we may mention in particular:—

Resolution of lower house of Canterbury, 9th Feb. 1859 (*Chron. of Conv. Cant.* 40 ff., 32 ff.) in connexion with a protest against the insufficient regard for ecclesiastical law respecting marriage and divorce shown in 20 & 21 *Vict.* c 85: *This house, also, fully recognising the supreme power of the Imperial Parliament to legislate for all estates of men within the realm, is of opinion that when changes in the law are proposed which would affect the doctrines of the Articles of the Church, or the duties required of the clergy, it is desirable that the advice of the clergy should be sought before the enactment of such changes.* In the upper house speeches were made on both sides, but no resolution was passed. The lower house on 22nd June, 1859, repeated its resolution in almost the same terms. *Chronicle* 43. In the upper house again no resolution was come to. The lower house on 8th June, 1860, rejected a motion to repeat the resolution once more in almost the same language as before. *Chronicle* 314, 269.

Resolution of lower house of Canterbury, 26th June, 1879 (*Chron. of Conv. Cant.* 1879, pp. 177 ff.):—

1. *That in the opinion of this House it is desirable, and in accordance with constitutional precedent, that, when any legislative measures are proposed affecting the doctrine, worship, discipline, or government of the Church of England, Her Majesty should issue Royal Letters of Business commanding the Convocations to consider and report upon the proposed measures.*

2. *That in the opinion of this House, in cases directly affecting doctrine and ritual, and in cases of discipline for correction of offences arising out of doctrine and ritual, action taken by Parliament alone, without reference to the Convocations, cannot be regarded as in accordance with the spirit of the Constitution.*

[28] In the endeavour to establish for convocation such a right by precedents

§ 56.

The houses of laymen.

From the year 1886 there has existed in close connexion with the convocation of Canterbury, but not as a part of it, a house of laymen. The members are elected by the lay members of the diocesan conferences,[1] whilst the archbishop of Canterbury may further name at most ten members. The summoning of a house of laymen was the result of a series of deliberations and resolutions of convocation,[2] culminating in the resolution of 7th and 8th July, 1885.[3] Accord-

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stress is laid on the following: the declaration made on behalf of Elizabeth in the house of commons on 22nd May, 1572: *Her Highness' Pleasure is, that from henceforth no Bills concerning Religion shall be preferred or received into this House, unless the same should be first considered and liked by the Clergy.* (D'Ewes, *The Journals of all the Parliaments during the Reign of . . . Elizabeth*, London, 1862, p. 213); the attempted recurrence in 1661 of the house of commons to the second prayer-book of Edward VI, which had been accepted both by the commons and by convocation, instead of to the later book of Elizabeth, accepted only by parliament (cf. Perry, *Hist. of Engl. Ch.* II, 496, note 1, c 32 § 16); the parliamentary resolution (mentioned in § 54, note 67) of 1689; a resolution of the house of commons in 1710 to pay all regard to the house of convocation in matters ecclesiastical (cf. Perry II, 577 c 39 § 1; Phillimore 1932); lastly, the express mention in the preambles to a number of statutes (recently, for instance, in 35 & 36 *Vict.* c 35 *An Act for the Amendment of the Act of Uniformity;* not, however, in 34 & 35 *Vict.* c 37 *Prayer-Book, Tables of Lessons, Act*) of previous discussion by convocation.

The *Public Worship Regulation Act* of 1874 (37 & 38 *Vict.* c 85) was adopted without consultation of the convocations and in spite of the fact that the lower house of Canterbury had expressly declared its disapproval of the bill (*Chron. of Conv. Cant.* 1874, pp. 125, 126, 199, 228). Opposition to the provisions of the act when passed was offered by some of the clergy. Perry, *Hist. of Engl. Ch.* III, 482 ff. c 28 §§ 12 f.

[1] Cf. § 57, near notes 12 ff.

[2] Proposals of lower house of Canterbury 'on Lay Co-operation' in append. to *Chron. of Conv. Cant.* 1872. Resolution of lower house of Canterbury, 27th April 1877, in *Chron. of Conv. Cant.* 1877, pp. 157, 165. Amending resolution of upper house of Canterbury, 4th July, 1884 in *Chron. of Conv. Cant.* 1884, Summary xlvi.

[3] Upper house and lower house of Canterbury in agreement passed on 7th and 8th July, 1885, the following (not binding, cf. § 55, note 24) resolution (*Chron. of Conv. Cant.* 1885, Summary pp. xxx f.):—

1. *That it is desirable that a House of Laymen, being communicants of the Church of England, be formed for the Province of Canterbury, to confer with the members of Convocation.*
2. *That the Members of the House of Laymen be appointed by the Lay Members of the Diocesan Conferences of the Province, and that they continue to hold their seats until the dissolution of Convocation next ensuing.*
3. *That ten Members be appointed for the diocese of London; six for each of the dioceses of Winchester, Rochester, Lichfield, and Worcester; and four for each of the remaining dioceses.*
4. *That additional Members, not exceeding ten, be appointed by his Grace the President* (*i.e.* the archbishop of Canterbury), *if he see fit.*
5. *That the House of Laymen be in all cases convened by his Grace the President.*
6. *That the said House be convened only and sit only during the time that Convocation is in Session, and be opened by his Grace the President.*

ing to this resolution the house of laymen should be an assembly to assist the archbishop in questions on which he may desire its counsel. All matters usually discussed in convocation, excepting only 'the definition or interpretation of the faith and doctrine of the Church,' are to be in its province. It is, however, to be observed that the resolution, the provisions of the submission act not having been complied with, is not a canon, and is thus not binding on any one, and, in particular, neither on the archbishop nor on the house of laymen.

In the province of York a house of laymen met first in 1892.[4]

§ 57.

B. DIOCESAN SYNODS AND DIOCESAN CONFERENCES.[a]

In the Anglo-Saxon period the holding of a diocesan synod once in the year is apparently required, and sometimes taken for granted.[1]

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7. *That the said House may be requested by his Grace the President to meet in conference the Members of the Upper and Lower Houses of Convocation upon such occasions and at such place as his Grace the President may think fit.*
8. *That the subjects on which the House of Laymen may be consulted shall be all subjects which ordinarily occupy the attention of Convocation, saving only the definition or interpretation of the faith and doctrine of the Church.*
9. *That his Grace the President, in opening the House of Laymen, or at any other time in their Session may lay before them any subject (with the limitation provided in Resolution 8) on which he desires their counsel, and that the results of all the deliberations of the said House on any subjects, whether thus referred to them or originated by themselves, be communicated to the President.*
10. *That if the above Resolutions be adopted by Convocation a Joint Committee of both Houses be appointed to confer with any Committee that may hereafter be appointed by the House of Laymen, in order to frame such rules and orders as may be found necessary.*

Provided that nothing in this Scheme shall be held to prejudice the duties, rights, and privileges of this Sacred Synod according to the laws and usages of this Church and realm.

[4] *Journ. of Conv. York*, 1892, p. 79; *Church Year-Book*, 1893, p. 367.

[1] One diocesan synod in the year is mentioned in *can. sub Edgaro* (*circ.* 960; Wilkins, *Conc.* I, 225) c 3: *And we laeraþ þaet hi to aelcon sinoþe habba aelce geare becc and reaf to godcundre þenunge, and blaec and bocfel to heora geraednessum, and ðreoro daga biwiste.* ("And we teach that they [the servants of God] should have for every synod each year books and clothes for God's service and ink and parchment for their resolutions and provisions for three days.")

Councils of *Pincahala* and *Celchyth*, 787 (Haddan and Stubbs, *Counc.* III, 449) c 3: . . . *perstrinximus, omni anno secundum canonicas institutiones, duo concilia . . . , et unusquisque Episcopus parochiam suam omni anno semel circumeat; diligenter conventicula per loca congrua constituendo,*

[a] Cf. the works cited in § 54, note a II.—Gibson, *Of Visitations Parochial and General.* London, 1717, pp. 57 ff.—Pound, William. *The ancient practice and proposed revival of diocesan synods in England; a Paper . . .* London, 1851.

Nevertheless, in the face of the few accounts of such synods preserved, it would seem doubtful that they were held so regularly. At the diocesan synod presented themselves, apparently without any sharp separation, all the clergy who laboured in the diocese under the bishop, especially after the establishment of numerous ministers in fixed parishes, the parish priests.[2] Besides holding diocesan synods, it was the duty of the bishops to traverse their districts annually in order to administer their sees, hold divine service and visit offences by the imposition of ecclesiastical penances.[3]

In the later middle age as a rule we find mention in England of yearly diocesan synods;[4] the constant visitations by the bishop of

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quo cuncti convenire possint ad audiendum verbum Dei . . . [cf. c 1 *. . . omni anno in synodalibus conventibus ab Episcopis singularum ecclesiarum presbyteri . . . de ipsa fide diligentissime examinentur*]. The *duo concilia* mentioned in c 3 are frequently referred to diocesan synods. But on comparison with the regulation in c 1 it seems more probable that in c 3 provincial synods are meant. The heading of c 3: *Ut Episcopus bis in anno synodum cogat* was added by Spelman.

On the continent diocesan synods are first mentioned at the end of the sixth century; there yearly session was at that time prescribed. They subsequently fell into decay in the empire of the Franks; in the ninth century, however, attempts were made to revive them and the holding of two annual gatherings was now sometimes prescribed. From the eleventh century onward now one, now two diocesan synods have been ordained. Hinschius, *Kirchenrecht* III, 583 ff. A reference to the canons such as is found in counc. of *Pincahala* and *Celchyth* c 3 occurs in the *conc. Tolosan.* 844, where the allusion is without doubt to diocesan synods: *Ut episcopi synodos a presbyteris, nisi sicut docet auctoritas canonum, duos scilicet et per tempora constituta, non exigant.*

[2] Cf. *Poenitentiale Theodori* (probably end of 7th cent., Haddan and Stubbs, *Counc.* III, 173 ff.) lib. II c 2 § 3: *Episcopus non debet abbatem cogere ad synodum ire, nisi etiam aliqua rationabilis causa sit.*—Council of *Clovesho*, 747 (Haddan and Stubbs III, 363) c 25: *Ut Episcopi a synodo* (the archiepiscopal synod) *venientes in propria parochia cum presbyteris, et abbatibus, et praepositis conventum habentes, praecepta synodi servare insinuanda praecipiant, . . .*—*Norðhymbra preósta lagu* (probably about 10th cent.) c 44: *Gif preóst sinôð forbûge, gebête þaet.* ("If a priest evades a synod let him do penance for that.")

[3] Annual visitation of the diocese is, for example, prescribed in the council of *Clovesho*, 747 (Haddan and Stubbs, *Counc.* III, 363) c 3: *. . . ut singulis annis unusquisque episcopus parochiam suam pertransiendo, et circumeundo, speculandoque visitare non praesideat, populumque diversae conditionis ac sexus per competentia ad se convocet loca, aperteque doceat, utpote eos qui raro audiunt verbum Dei, prohibens, et inter caetera peccamina, paganas observationes . . .*

Councils of *Pincahala* and *Celchyth*, 787, c 3 (see note 1); constit. of archbishop Odo, 943 (Wilkins I, 212) c 3: *episcopi . . . . suas parochias omni anno cum omni vigilantia praedicando verbum Dei circumeant.*

Cf. from later times (1433) Lyndwood, Book I, tit. 14, p. 68 [to *const. Bonif. episcopi in suis synodis et aliis convocationibus*], gloss to *aliis convocationibus: Quas ex variis causis facere potest Episcopus, viz. propter subsidium Charitativum exhibendum; propter visitationem exercendam; item propter praedicationem verbi Dei; et in aliis quae variis de causis possunt occurrere.*

[4] Wilkins, *Concilia* I, 365 gives from different MSS. two separate series of *capitula* ascribed to the council of Winchester, 1076, one of them (according to *MS. C.C.C. Cambridge* 190) perhaps rather belonging to a council of Windsor. In one series c 4 runs: *Quod episcopi bis concilia celebrent per annum.* In the other c 13 runs: *Quod quisque episcopus omni anno synodum celebret.*

his diocese and the meetings held by him on such occasions in the several parishes gradually ceased, probably owing to the fact that about the time of the Norman conquest the division of the bishoprics into archdeaconries and rural deaneries called into existence supervisors resident in the districts so formed.[5] The annual visitation now became the duty of the archdeacons, probably also, in part, of the rural deans.[6] But in so far as the bishop still retained competence, the business of the old visitations was transacted at the diocesan synod. As the latter in this way served the purpose of an united visitation assembly, it also became entitled a 'general visitation.' The development which took place in England in this respect seems to have corresponded closely with that on the continent.[7] At this period, too, all the clergy of the diocese were obliged to appear at the diocesan synod.[8] With them attended also lay representatives from the parishes, *testes synodales* or synodsmen, whose duty it was

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Lyndwood, Book I, tit. 14, p. 68 [to *const. Bonif. episcopi in suis synodis et aliis convocationibus*], gloss to *synodis: Hae dicuntur conventus sive congregationes senum et Presbyterorum, et* (with reference to Decretals of Greg. IX [*lib. Extra*] V tit. 1 c 25) *debent fieri per Episcopos annuatim.* Const. of archbishop Peckham, 1281: *quod jurent decani (rurales) se fideliter facturos in episcopali synodo omni anno.* (Wilkins, *Concilia* II, 57.)

Two diocesan synods were to be held, *e.g.* in the diocese of Durham according to the constitutions of the bishop of Durham, 1312 (Wilkins, *Concilia* II, 416) c 3: . . . *decrevimus, quod bis in anno de caetero, proximis videlicet diebus Lunae post festum sancti Michaelis, et octabis Paschae, synodus annis singulis in dicta nostra ecclesia perpetuis temporibus celebretur* . . .

[5] In the 13th cent. the kings sometimes forbade the bishops to summon the laity to visitation assemblies. Cf. the answer of the king to the complaint of the clergy (*circ.* 1245? Cole, *Documents* 356) Art. 13: *Si fuerint aliqui specialiter nominati quorum testimonio indigeat judex ecclesiasticus ad hoc ut in foro ecclesiastico justicia vel correctio fiat, non impediuntur Prelati per Regem neque per alios auctoritate ipsius, verumptamen si ad conventicula magna vocantur liberi vel servi non videtur Regi aut proceribus hoc esse tolerandum cum ad eos et non ad alios pertineat hujusmodi convocacio laicorum, veluti ad Prelatos convocacio Clericorum. Et insuper Rex et proceres tempore hujusmodi convocacionum servicio et obsequio tam liberarum personarum quam servilium carerent, quod eis invitis auferre non possunt Prelati* . . . Prohibition of a certain king Edward, time unknown (§ 60, note 79). Cf. also const. of archbishop Boniface at the council of Lambeth, 1261 (Wilkins, *l.c.* I, 751): *Evenit etiam interdum, quod cum praelati ecclesiastici, ex officii sui debito, de morum disciplina, peccatis, et excessibus subditorum inquirunt, dominus rex, caeterique magnates et aliae potestates seculares et milites officia impediunt eorundem, personis laicis inhibendo, ne ad mandatum patrum et praelatorum spiritualium* . . . *de veritate dicenda subeant juramentum;* . . . *statuimus, quod laici ad praestandum hujusmodi juramentum* . . . *per excommunicationis sententiam compellantur* . . .

[6] Cf. § 42, note 11 and § 43, note 3.

[7] Cf. on the continental development Richter, *Kirchenrecht* §§ 150, 173.

[8] According to Wilkins, *Concilia*, vol. I, Introduct. p. 7 there were present at the diocesan synod all holders of benefices *tam regulares quam abbates et monachi*, archdeacons, priests, vicars and chaplains. Const. of bishop of Durham, 1312 (Wilkins, *Conc.* II, 416) c 3: . . . *Quodque omnes abbates, priores, archidiaconi, praepositi, rectores, vicarii, et capellani parochiales civitatis et dioecesis Dunelm. et alii, qui tenentur synodo hujusmodi interesse de consuetudine, vel de jure,* . . . *intersint synodo personaliter,* . . .

to make presentments of offenders, clerical or lay, in their parishes.[9] There grew up in England even before the reformation the custom that the bishop should make personal visitation of his diocese every three years.[10]

With the reformation the holding of diocesan synods fell almost wholly into disuse; only in isolated cases did such meetings take place.[11] In the nineteenth century likewise, the summoning of diocesan synods was at first of exceptional occurrence.[12] When, however, the convocations had resumed their activity, development took a new direction. The idea of reviving the old diocesan synods, which, as the earlier practice of inviting the laity had become obsolete, had represented only the clergy, was abandoned; but an effort was made to establish regular meetings of the clergy and laity in each diocese. The first such assembly was at Ely in 1864. Since then the institution has been gradually adopted in almost all the bishoprics, under the name of diocesan conferences. Their statutes are not quite uniform. For the most part the conferences are voluntary undertakings, for which the countenance of the heads of the church is sought, but which are in a legal sense independent of them; on the other hand, in some cases the diocesan conferences have been founded by the competent ecclesiastical power [13] and are consequently, in the eye of the law, authorities of the established church. In addition to the diocesan conferences

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[9] Lyndwood (above, note 4) *congregationes senum et Presbyterorum.* On the *testes synodales* cf. § 48, note 2.—On the appointing of special laymen in the several rural deaneries or parishes to make reports to the ecclesiastical authorities cf. constitutions of archbishop Edmund of Canterbury, 1236 (Wilkins, *Conc.* I, 635) c 21: *Sint autem in quolibet decanatu duo vel tres viri . . . , qui excessus publicos praelatorum, et aliorum clericorum, ad mandatum archiepiscopi, vel ejus officialis, ipsis denuncient.*—Const. of archbishop Chichele, 1416 (Wilkins, *l.c.* III, 378): . . . *singuli confratres nostri suffraganei, singulique archidiaconi . . . per se aut suos officiales sive commissarios . . . inquirant, ac in singulis decanatibus . . . , singulisque parochiis, in quibus fama est haereticos habitare, tres vel plures boni testimonii viros, ad sacra Dei evangelia jurare faciant, ut . . . haereticos . . . in scriptis denuncient,* . . .

[10] Legatine council under Pole (Wilkins IV, 121; promulgation in Feb. 1556) c 12: . . . *placuit, ut episcopi et alii locorum ordinarii dioeceses et loca sibi commissa juxta antiquam hujus regni consuetudinem saltem singulis triennis per seipsos, sin autem legitimo aliquo impedimento detineantur, per idoneos substitutos . . . visitent.*—Can. 60 of 1604 (appendix XII) lays down that the bishop should hold a confirmation at his triennial visitation, as was already the custom.

[11] Prideaux, *Churchwardens* 9th Ed. p. 178, for instance states that in the diocese of Norwich since 1641 there had been held annually assemblies which he terms diocesan synods, the clergy of Suffolk meeting at Ipswich, those of Norfolk at Norwich.—It is sometimes maintained that the cessation of diocesan synods was connected with the act of submission. So Kennett, *Eccles. Synods* 201, who adds that after the repeal of the act in Mary's reign several bishops again held diocesan synods. On the question whether the act applies to such synods see § 54, note 56.

[12] *E.g.* one was summoned at Exeter, 1851 (Perry, *Hist. of Engl. Ch.* III, 285 ff. c 15 § 11), at Lincoln, 1871 (Perry, *l.c.* III, 421 c 24 § 6).

[13] So, *e.g.* in Lincoln. Perry, *l.c.* III, 421 c 24 § 6.

there are instances of diocesan synods again deliberating.[14] The conferences have since 1881 found a common centre in the 'Council of Diocesan Conferences.'[15] This also is legally independent of the church system. It consists of clerical and lay members chosen at the diocesan conferences. It draws up summaries of the diocesan resolutions, and itself discusses subjects which fall within the scope of the diocesan conferences.[16]

§ 58.

C. RURAL CHAPTERS.[a]

Rural chapters are assemblies of the clergy of a smaller area within a bishopric. When regular gatherings of this kind became customary is not known. Probably their origin is connected with the establishment of fixed decanal districts.[1]

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[14] In the *Church Year-Book*, 1891, the diocesan synods mentioned as having met are those of Lichfield and Salisbury. In addition to the former there was a Lichfield diocesan conference. The synod of Salisbury seems to belong to the association of conferences. On the diocesan conferences in 1872 and the representation of the laity in diocesan synods see appendix B in the report of the committee of the lower house of Canterbury on lay co-operation, append. to *Chron. of Conv. Cant.* 1872. In 1880 the only dioceses in the southern province in which there were not conferences were Salisbury, Gloucester and Bristol, London, Llandaff and Worcester. In Salisbury there was however the synod, in Gloucester and Bristol a council, in London the establishment of a diocesan conference was pending. There were moreover in Ely, Lichfield and elsewhere archidiaconal conferences presided over by the bishop. Report of a committee of the lower house in *Chron. of Conv. Cant.* 1881, appendix. The diocesan conference of London held its first session in 1883. In the northern province there were in 1882 diocesan conferences in York, Carlisle, Chester, Liverpool, Sodor and Man, Durham, Manchester, Ripon, Newcastle. Committee report, 1883, No. 148 in append. to *Chron. of Conv. Cant.* 1883. In 1883 a diocesan conference was established in Llandaff (Committee report, 1885, No. 180 in append. to *Chron. of Conv. Cant.* 1885), in 1885 in the newly founded see of Southwell (Committee report, 1886, No. 196 in append. to *Chron. of Conv. Cant.* 1886), in 1892 in the newly founded see of Wakefield (*Church Year-Book*, 1893, p. 376).

[15] In 1881 the diocesan conferences of Winchester, Bangor, Chichester, Ely, Hereford, Lichfield, Lincoln, Norwich, Oxford, Peterborough, Rochester, St. Alban's, St. Asaph, Truro, Ripon, Chester, Carlisle, Manchester, Sodor and Man combined to send representatives (six laymen and six clergymen from each) to a *Central Council*. *Chronicle of Convocation Cant.* 1882 (append. No. 137, p. 14). The principles (agreed 7th July, 1881) which were to govern the central council are printed *l.c.* p. 42. Later adhesions were Bath and Wells, Canterbury, Durham, Gloucester and Bristol, Llandaff, London, Newcastle, St. Davids etc. The diocesan conference of York in 1883 rejected a proposal to co-operate.

[16] For further particulars as to the constitution and operations of diocesan conferences and the central council and as to the dates of their establishment see *Church Year-Book*, 1883, p. 380.

[1] Cf. § 43, note 2. It is perhaps to rural chapters that the reference is in *leg. Ed. Conf.* (a law-book; probably dating from the beginning of the twelfth century). c 2 § 8: . . . *omnibus Christianis ad ecclesiam Dei causa orationis*

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[a] For literature cf. § 43, note *a*.

In the twelfth century these assemblies were called by the rural dean, who presided at them. With the thirteenth, it began to be urged that the frequent presence of the archdeacon was desirable.[2] As he had higher rank than the rural dean, the general presidency passed by degrees to him. From the end of the thirteenth century it became the practice that, as a rule, the officials of the archdeacons held the chapters, the rural deans doing so only occasionally.[3] In consequence of this development the power to determine minor cases at first exercised by the rural chapters became vested in the archdeacon's court.

For several centuries a distinction was drawn between the chief assemblies, held every quarter to discuss more serious business, and less important meetings, attended by fewer persons, which took place every three or four weeks.[4]

The decay of rural chapters, as of the office of rural dean, began even before the reformation. During that period and after it they fell more and more into disuse. As until the commencement of the nineteenth century attempts to revive the office of rural dean remained fruitless, so it was not found possible to give vitality to rural chapters. Only in this century have meetings of the clergy of the rural deanery under their rural dean again been allowed in some of the dioceses.[5] Such assemblies possess no powers of jurisdiction.

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pergentibus pax sit in eundo et redeundo; item ad dedicationes euntibus, et ad synodos et ad capitula, sive summoniti sint, sive per se ibi quid agendum habeant. Abroad rural chapters were known in many places in and after the 9th century; they, however, never became so general as in England during the twelfth and thirteenth centuries. Richter, *Kirchenrecht* p. 138, note 4. Dansey II, 2 ff.

[2] Constit. Otho (1237) c 20: . . . *sint autem soliciti (scil. archidiaconi) frequenter interesse capitulis per singulos decanatus in quibus diligenter instruant . . . sacerdotes . . .* (Wilkins, *Conc.* I, 649.)

[3] John of Actona (shortly after 1332), p. 54, gloss *cap. rural.* to const. Otho: . . . *quae hodie tenentur per officiales archidiaconorum et quandoque per decanos rurales.* In the documents of that time the chapters are variously called chapters of the archdeacons and chapters of the deans. Cf. *e.g.* provincial synod of *Oxford*, 1222 c 22 (Wilkins, *Conc.* I, 585), const. of bishop of Salisbury, 1256 (*l.c.* I, 715), episcopal synod of Norwich, 1257 (*l.c.* I, 735), of Exeter, 1287 c 31 (*l.c.* II, 148), provincial synod of Reading, 1279 c 5 (*l.c.* II, 36), synod of province of Canterbury, 1341 c 7 (*l.c.* II, 675).

[4] Lyndwood, *Provinciale* (1433), Book I, tit. II p. 14, gloss: *horum capitulorum quaedam tenentur de tribus hebdomadis in tres; quaedam semel in quarta anni et haec dicuntur capitula principalia propter majorem confluentiam cleri et quia in his de negotiis arduoribus tractari consuevit.* Cf. also episcopal synod of *Exeter* (1287) c 31: *De mense in mensem capitula celebrentur* (Wilkins II, 148). Syn. of prov. Cant. (1341) c 7: . . . *capitula de tribus in tres septimanas . . . celebrantes* (Wilkins II, 675).—The presence of laymen at the deliberations of rural chapters is forbidden in a mandate of archbishop Peckham, 28th March, 1286 (*Registr. Ep. Peckham; Rer. Brit. Scr.* No. 77; III, 920).

[5] Cf. *e.g.* instruction to the deans in the diocese of London (1833) c 6, in Dansey II, 355, also the rural dean's commission as now used in the diocese of Salisbury, printed in append. XIII, 2.

On an example of the reintroduction of rural chapters (in a rural deanery of Exeter, 1849) see Warren, *Synodalia* p. 134.

14. ECCLESIASTICAL COURTS.

A. HISTORICAL.

§ 59.

a. To the Norman conquest.[a]

It has not yet been sufficiently elucidated in what way the exercise of jurisdiction during the Anglo-Saxon and Danish periods was divided between the civil and ecclesiastical authorities; nor is it known whether in the Anglo-Saxon period the line of division varied even after the complete triumph of Christianity. The question is considered below. The extent to which ecclesiastical persons took part in civil courts is at the same time examined so far as is necessary to determine precisely the competence of ecclesiastical courts proper.

1. Participation of ecclesiastical persons in temporal courts.

From the reign of Edgar (959–75) at the latest,[1] a high civil official[2] and the bishop presided jointly over the shire-moot.[3]

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[1] From *Alfred* (871–901) c 38, *In case a man fight before an ealdorman in the gemot*, we must perhaps infer that in his time the bishop did not as yet preside in conjunction with the ealdorman. Similarly it is ordained by *Edward* (901 to 924–5) II c 8 that every gerefa is to hold a gemot every four weeks. *Alfred* c 38 § 2 does, it is true, mention fighting 'before the king's ealdorman's junior *or the king's priest*.'

[2] This was in earlier times (*e.g.* in Wessex under Ine, 688 to 726–8) until Knut's day, as a rule, the ealdorman. It is, however, to be observed that the district of the ealdorman (like that of the bishop) for the most part extended over several counties. The sheriff (*sciregerêfa*), whose office is equally old, appears as assisting the ealdorman, but also as an independent magistrate. Knut divided the kingdom into four provinces, over each of which stood an eorl. Probably the smaller, shire-districts presided over by a *sciregerêfa* were still retained. Edward the confessor altered Knut's division, and temporarily ealdorman and eorl, whose offices seem to have been fused under Knut, again appear side by side. Gneist, *Verfassungsgesch.* § 4. Stubbs, *Const. Hist.* I, 125, 132, 176 c 5 §§ 49, 50 c 6 § 66.

[3] *Edgar* III c 5: *And sêce man hundred-gemôt, . . . and haebbe man þriwa on geâre burh-gemôt, and twwa scir-gemôt, and þær beô on þære scire bisceop and se ealdorman, and þær ðegðer tæcan ge Godes riht ge woruld-riht.* ("And let the hundred-gemot be attended as it was before fixed; and thrice in the year let a burh-gemot be held; and twice, a shire-gemot; and let there be present the bishop of the shire and the ealdorman, and there expound both things, as well the law of God as the secular law.")

Knut II c 18: *And habbe man þriwa on geâre burh-gemôt, and twâ scir-gemôt . . . buton hit oftor neôd sî. And þær beô on þære scire bisceop and se ealdorman, and þær ðegðer tæcan ge Godes riht ge woruld-riht.* ("And thrice a year let there be a burh-gemot and twice a shire-gemot . . . unless there be need oftener. And let there be present the bishop of the shire and the

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[a] Stubbs, *Const. Hist.* I, 253 c 8 § 87.

Similarly, the hundred-moot seems to have been held by the bishop or his archdeacon in conjunction with the temporal official.[4]

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ealdorman ; and there let them expound both things, as well the law of God as the secular law.")

Charter of Knut (probably in 1020, at any rate between 1018 and 1021) addressed to his lay and spiritual subjects in England (printed in the edition of *Chronicles of Croyland Abbey* by Walter de Gray Birch, p. x ; cf. Stubbs, *Sel. Chart.* 5th Ed. p. 75): . . . *Nu bidde ic mine arceb. and ealle mine leodb. thaet hy ealle neodfulle beon ymbe Godes gerihta aelc on his ende the heom betaeht is ; and eac minum ealdormannum ic beode thaet hy fylstan tham biscopum to Godes gerihtum and to minum kynescipe, and to ealles folces thearfe ; Gif hwa swa dyrstig sy, gehadod oththe laewede, Denisc oththe Englisc, thaet ongean Godes lage ga and ongean minne cynescype, oththe ongean worold riht, and nelle betan and geswican aefter minra bisceopa taecinge, thonne bidde ic Thurcyl eorl and eac.beode thaet he thaene unrihtwisan to rihte gebige gyf he maege ; . . . and eac ic beode eallum minum gerefum bi minum freondscype, and be eallum tham the hi agon, and be heora agenum life, thaet hy aeghwaer min folc rihtlice healdan, and rihte domas deman be thaera scira bisceopa gewitnesse, and swylce mildheortnesse thaeron don swylce thaere scire bisceope riht thince, and se man acuman maege ; . . .* ("Now I beseech my archbishops and all my suffragan bishops that they all be attentive about God's right and to my royal authority and to the behoof of all the people. If any be so bold, clerk or lay, Dane or English, as to go against God's law and against my royal authority, or against secular law, and be unwilling to make amends and to alter according to my bishops' teaching, then I pray Thurcyl my earl, and also command him, that he bend that unrighteous one to right if he can ; . . . and also I command all my reeves, by my friendship and by all that they own, and by their own life, that they everywhere hold my people rightly and judge right judgments by the shire bishops' witness, and do such mercy therein as the shire bishop thinks right, as a man may attain to ; . . .")

Institutes of Polity (printed in Thorpe [*Record Commission*], *Ancient Laws etc.* 422 ff.) c 7: . . . , *þy sculon bisceopas mid woruld-deman domas dihtan, þaet hi ne gefaſian, gyf his waldan magan, þaet ðaer aenig unriht up-aspringe. And sacerdum gebyreþ eac on heora scrift-scirum þaet hi georne to rihte aethwam fylstan, and na gefaſian, gif hi hit gebetan magan, þaet aenig cristen man oðrum derige ealles to swyðe,* . . . (". . . therefore should bishops, with temporal judges, direct judgments so that they never permit, if it be in their power, that any injustice spring up there. And on priests also it is incumbent, in their shrift-districts, that they diligently support every right, and never permit, if they can ameliorate it, that any Christian man too greatly injure another.")

Stubbs, *Const. Hist.* I, 128 c 5 § 50 understands the law under Edgar and Knut to have been that bishop and ealdorman were present, but that the sheriff was the constituting officer. See, on the other side, Gneist, *Verfassungsgesch.* § 4. Cf. also Twiss, Introduction pp. xviii ff. to Bracton V (*Rer. Brit. Scr.* No. 70). It can hardly be supposed that the sheriff would conduct the business in the presence of the ealdorman, so long as the dignity of the latter had not sunk to be merely honorary. The words in the ordinance of William I (append. I): *ut nullus episcopus vel archidiaconus . . . amplius in hundret placita teneant* . . . are also in favour of *control* of the business by the persons named.

On similar but somewhat earlier developments in the empire of the Franks see Richter, *Kirchenrecht* § 206, note 29.

[4] So may *Edgar* III c 5 and *Knut* II c 18 be understood if we refer *þaer beô on* not only to *scir-gemôt*, but in Edgar to all three, in Knut to the two before mentioned kinds of the gemot. Cf. also *Alfred* c 38 § 2 (above, note 1). Then the mention of the 'hundret' in the ordinance of William I (see append. I) would agree herewith. Why in that ordinance the shire-moots, which continued to exist side by side with the hundred-moots, are not mentioned, would

Both Edgar and Knut order that ealdorman and bishop shall expound 'both things, as well the law of God as the secular law.' Thus both persons are to expound the *same* law, not the ealdorman only the secular law, and the bishop the law of God. Nor is the rule to be understood as implying that in this court owing to the co-operation of ealdorman and bishop secular punishments are to be inflicted for breach of the laws of the state, ecclesiastical pains for violation of ecclesiastical laws. On the contrary, it is to be maintained that at these judicial assemblies only such penalties could be assigned as were based on the law of the land. This view is supported by remarks in the laws which show that ecclesiastical regulations could only be enforced when backed by the secular laws.[5] For, if the same authority as prescribed secular punishments, that is the folkmoot, had determined ecclesiastical penalties, it would not be clear why the latter should be harder to enforce than the former. That in the gemot only secular punishments could be assigned, follows, moreover, from the whole constitution of that court. The judges proper (*Urteilsfinder*) were not the ealdorman and the bishop, but the assembled suitors. According to the fundamental ideas of the priestly office, it probably was not possible to leave decision as to ecclesiastical pains to other than purely ecclesiastical authorities.

Thus the statement that 'the law of God' was to be expounded in the gemot as well as the secular law, must be otherwise conceived. Above all, the reference will be to the church dues enforceable by the state and to the *church-grið*, which the state defended; furthermore, the provision contains an allusion to those legal relations,

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indeed be not quite explicable. Gneist, *Verfassungsgesch.* § 14, note * supposes that 'hundret' here signifies the place of the court (*Gerichtsstätte*), at which the shire-moots were also held.—Hundreds and then moots are first mentioned in England in Edgar's time (950–75), but are doubtless more ancient. Stubbs, *Const. Hist.* I, 104 ff. c 5 § 45; Henry Adams, *The Anglo-Saxon Courts of Law* pp. 13 ff. in *Essays in Anglo-Saxon Law*, Boston, 1876. Even if we assume that any ecclesiastical officer sat in the hundred-moot, it may still be doubted whether that officer was the bishop, as it is also doubtful (Stubbs, *Const. Hist.* I, 116 c 5 § 46, Gneist, *Verfassungsgesch.* § 4; on the mention of the *gingra* or junior as the ealdorman's deputy cf. also the Anglo-Saxon treatise printed by Liebermann in *Zeitschrift der Savigny-Stiftung*, vol. V, German section, pp. 207 ff.) whether the secular president (ealdorman or sheriff) ever regularly conducted the hundred-moot or whether the duty devolved on special, subordinate officers.

[5] *Edward & Guthrum* (probably end of 9th cent.), Introduction § 2: *And hig gesetton woruldlîce steôra eâc, for þâm þingum, þe hig wistan, þaet hig elles ne mihton manegum gesteôran, ne fela manna nolde tô godcundre bôte elles gebûgan, swâ hŷ sceolde; and woruld-bôte hig gesetton gemǽne Criste and cynge, swâ hwâr, swâ man nolde godcunde bôte gebûgan mid rihte tô bisceopa dihte.* ("And they established worldly rules also for these reasons, that they knew that else they might not many control, nor would many men else submit to divine 'bot' as they should; and the worldly 'bot' they established in common to Christ and to the king, wheresoever a man would not lawfully submit to divine 'bot' by direction of the bishops.") Cf. *Aethelred* VIII (laws of 1014) c 36: *Be griðe and be munde* (Schmid, *Ges. d. Angelsachsen*, append. IV) c 24; *Be hâd-bôte* (Schmid, append. IX) c 11.

such, for instance, as marriage, in regard to which ecclesiastical influences had recently produced a change in the old folkright.[6] [7]

In proceedings before the folk-moot there was no sharp distinction between civil and penal suits. But in cases in which a breach of the public peace was in question, particularly then in more serious offences and where there was non-fulfilment of public duties (*e.g.* if church dues were not paid), apart from compensation to the injured person, a public penalty was assigned. This was, as a rule, a money-fine, which usually fell to the king; but if the interests of the church were also involved, the church received a share which varied according to circumstances.[8] This again served to secure the

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[6] According to the text of the passages cited in note 3 the ealdorman too is to expound God's law. Similarly it is said in *leg. Hen. I* c 8 § 1 (printed § 60, note 13) of the secular *aldermannus hundredi: Dei leges et hominum jura . . . studeant promovere.*—Only in the limited sense given in the text shall we be able to interpret the ordinance of William I § 2 (fully printed in append. I), in which the state of affairs until then prevailing is touched on with the words: *ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundret placita teneant nec causam quae ad regimen animarum pertinet ad judicium secularium hominum adducant.*

[7] The following passages, whose scope, however, is doubtful, also apparently relate to the part played by the bishop in the folk-moot: *Knut* II c 56: *Gif open morð weorðe, þaet man sŷ âmyrdred, âgife man magum þone banan, and gif hit tihtle sŷ and aet lâde mistîde dême se bisceop.* ("If there be open 'morth' so that a man be murdered, let the slayer be delivered up to the kinsmen; and if there be a prosecution and he fail at the 'lād,' let the bishop doom.") So the law-book *leg. Hen. I* c 71 § 1. Similarly in the case of adultery, *Knut* II c 53.—Do these regulations perhaps refer to some special competence of the bishop in cases of mere imputation without proof by witnesses? This meaning is favoured by *Institutes of Polity* (a discourse on the various civil and ecclesiastical powers and classes) printed in Thorpe (*Record Commission*), *Monumenta Ecclesiastica* c 7: . . . *He* (the bishop) *sceall georne saca sehtan and friðwyrcan, mid þam woruld-deman þe riht lufian. He sceall aet tihtlan ladunge gedihtan, þaet aenig man oðrum aenig woh beodan ne maege, aðor oððe on athe oððe on ordale.* . . . ("He shall zealously appease strifes and effect peace with those temporal judges who love right. He shall in accusations direct the 'lād,' so that no man may wrong another, either in oath or in ordeal . . . ")—Perhaps *dême se bisceop* is in these cases only another phrase for 'let ordeal take place.' Cf. *Dialogus Egberti* (universally regarded as genuine; between 732 and 766; printed in Haddan and Stubbs, *Counc.* III, 403) c 3.

Cf. further *Edward and Guthrum* c 10: "If a limb-maimed man who has been condemned be forsaken, and he after that live three days; after that, any one who is willing to take care of sore and soul may help him, with the bishop's leave." Cf. also the mention (above, note 3) in Knut's charter of the bishop as deciding on the mercy to be shown.—In *Edward and Guthrum* c 4 *Be siblegerum* (of incestuous persons) the words *swâ bisceop tæce* (as the bishop may teach) do not seem to refer to any judgment by the bishop.—On the co-operation of the bishop in executing the judgment of a secular court whereby the killing of a person for robbery was afterwards, on complaint of the relatives of the person killed, declared unjustifiable see the law-book *leg. Ed. Conf.* c 36 (cf. Aethelred III c 7).

[8] *Instituta Cnuti* (Schmid, append. XX; a law-book, probably written shortly after 1110) III c 53: *Antiqua consuetudo fuit, ut omnis ecclesiastica et secularis emendatio communis erat regi et episcopo.* The contention thus unqualified seems from the substance of the laws to be erroneous. Cf., however, *Edward*

co-operation of the ecclesiastical authorities in the business of the temporal courts.

Moreover the method of proof in vogue before the folk-moot implied the participation of the clergy. Ordeal was always conducted by a spiritual person.[9]

2. Ecclesiastical courts.

Purely ecclesiastical courts to determine disputed questions existed even in the Anglo-Saxon period.[10] Probably synodal assemblies often acted in this capacity;[11] but often too the bishop

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and Guthrum, Introduct. § 2 . . . *woruld-bôte hig gesetton gemǽne Criste and cynge* . . . (above, note 5), also *Aethelstan* VIII c 38: *And þâ man getwǽmde þaet ǽer waes gemǽne Criste and cyningce on woroldlîcre steôra* . . . ("And there they divided what before was common to Christ and the king in worldly *Steuer* [*steôra*, Steuer=government or punishment] . . .") See also *leg. Hen. I* c 11 § 14.—Liebermann in *Transactions of the Royal Historical Society*, New Series, VII, 98 calls attention to the fact that, in the above passage of the *Instituta Cnuti, ecclesiastica et secularis emendatio* must perhaps be taken as conveying one idea, the meaning being 'punishment for offences at once against ecclesiastical and civil laws.'

[9] *Aethelstan* II c 23. *Dôm be hâtan îsene and waetre.* *Exorcismus* (Schmid, append. XVI and XVII). Cf. also *Instit. of Polity* c 7 (above, note 7).—In reference to co-operation at oath-taking see *Penitentiale Bedae* (probably genuine; if so, 735; in Haddan and Stubbs, *Counc.* III, 326) c 5 § 2: *Qui sciens virtutem juramenti vel perjurii perjurat in manu Episcopi vel presbyteri vel in altari vel in cruce consecrata, III annos poeniteat;* also *Poenitent. Egberti* (almost certainly genuine; if so, between 732 and 766; in Haddan and Stubbs, *Counc.* III, 413) c 6 § 1: *Qui juramentum fecerit in aecclesia aut in evangelio sive in reliquas sanctorum, VII vel XI annos judicant.* § 2: *Si vero in manu Episcopi aut presbyteri aut diaconi, sive in cruce consecrata, unum annum peniteat, alii III vel VII judicant; et in cruce non consecrata, unum annum vel VII menses ut alii.* § 7: *Si quis in manu laici juraverit, apud Grecos nihil est.*

[10] *Norðhymbra preôsta lagu* (Schmid, append. II; about 10th cent.) c 5: *Gif preôst dôm tô lǽwedum sceôte, þe he tô gehâdedum scolde, gilde XX or.* ("If a priest refers a judgment to laymen which he should [refer] to consecrated [persons], let him pay twenty pieces.") Cf. also *Ine* (laws between 688 and 694) c 13 pr.: *Gif hwâ beforan biscepe his gewitnesse and his wed âleôge, gebête mid CXX scill.* ("If anyone before the bishop gives false witness or breaks his bargain, let him pay for it with 120 shillings.")

[11] Cf. the legal formula (Schmid, append. XI; date uncertain): . . . *þaet man cwydde oððon crafode hine on hundraede, oððon âhwâr on gemôte, on ceâpstowe oððe on cyric-ware* . . . (" . . . that they addressed him or summoned him before the hundred or anywhere before a court, before a market-place or before a church-gathering . . . "); Council of *Celchyth*, 816 (Haddan and Stubbs, *Counc.* III, 579) c 6: . . . *Ut non frangatur* [*frangantur*] *judicium* [*judicia*] *Episcoporum, quae a nobis nostrisque praedecessoribus synodale* [*synodali*] *decreta* [*decreto*] *constituta sunt, sed firma et inrefragabilis* [*inrefragabilia*] *ita permaneant;* . . . *Et iterum, si quis accusatoribus suis invitatur ad synodum, et ei obvianti non tardaverit, semel, secundo, tertia vice paratus rationem ponere, et acusator renuit, et suam causam movere differat; postea judicabimus nihil ab eo plus exigatur, sed suo proprio sit contentus.*

Cf. further the report of the councils of *Pincahala* and *Celchyth*, 787 (below, note 15).—Stubbs, *Const. Hist.* I, 252 c 8 § 87, considers it probable that synods under certain circumstances acted as friendly arbitrators in civil cases.

From the early Norman time cf. the following examples:—

in person or his chief officer seems to have been judge. At all events, there was no division between the judicial and the administrative authorities, nor can a sharp line be drawn between the two forms of activity as exercised by one and the same authority.

a. Competence in respect of persons.

Spiritual superiors exercised independently disciplinary powers over the clergy subordinate to them,[12] just as the king could, independently of the folk-moot, inflict disciplinary punishments on his officers. Apart from this, the church further required that in all disputes of clergymen with one another, recourse should be had not to the secular court, but to the higher ecclesiastical authorities.[13]

The assembly of the bishops officiated under Lanfranc as an ecclesiastical court. *Epist. Lanfranci* (ed. Giles) p. 51 (printed in § 60, note 83) and p. 76: *in adulteros sententiam diximus, et juste eos esse excommunicatos communi consensu decrevimus.*

Document touching a discussion before a diocesan synod in 1092 on a suit between two clerks in Bigelow, *Placita Anglo-Normannica*, 64. Judgment of a diocesan synod of Llandaff between 1149 and 1156 in *Hist. Monast. Gloucestriae* (*Rer. Brit. Scr.* No. 33) II, 52 ff. (cf. here Bigelow, *l.c.* 184).

Documents from the time shortly after 1145 upon the judgment of a synod of the archdeacon of Buckingham in *Historia Monast. Gloucestriae* (*Rer. Brit. Scr.* No. 33) II, 166 f. (cf. here Bigelow, *l.c.* 150 ff.).

[12] To this seem to be referable the following provisions in the laws:—

1. *Alfred* c 21: *Gif preost ôðerne man ofslea, . . . hine biscep onhâdige, þonne hine mon of pâm mynstre âgife, buton se hlâford þone wer fore þingian wille.* ("If a priest kill another man, . . . let the bishop secularize him; then let him be given up from the minster [apparently to the kinsmen that he may be brought before the secular court?], unless the lord will compound for his 'wēr'"); cf. in case of man-slaying or other grave offence *Aethelred* VIII c 26; *Knut* II c 41, where the words *þolige ge hâdes ge eardes* or *êðeles* ("let him lose class and fatherland") perhaps likewise signify the double condemnation.—Ecclesiastical penance has then also to take place, as usual.

2. *Edward and Guthrum* c 4 § 2: If a priest commits a crime worthy of death, he shall be seized and kept until the bishop's judgment. Similarly *Knut* II c 43. Apparently here nothing more is meant than the preliminary decision of the bishop on the clerk's deprivation of spiritual rank.

3. *Wihträd* c 6: "If a priest allow of illicit intercourse; or neglect the baptism of a sick person, or be drunk to that degree that he cannot do it; let him abstain from his ministry until the doom of the bishop."

[13] *can. sub Edgaro* (Wilkins, *Concilia* I, 225 assigns it to the year 960) c 7: *And we laeraþ, þaet nan sacu ðe betweox preostan sy ne beo gescoten to worldmannas dome, ac seman and sibbian heora agenne geferan, oþþe sceotan to ðam biscope gif man ðaet nyde scule.* ("And we enjoin, that no dispute that be between priests be referred to the adjustment of secular men; but let them adjust among and appease their own companions; or refer to the bishop, if that be needful.")—*Institutes of Polity* (in Thorpe [*Record Commission*], *Ancient Laws etc.*) c 10: . . . *Bisceopum gebyrað, gyf aenig oðrum abelge, þaet man geþyldige oð geferena some, butan heom sylfe geweorðan maege, and na sceotan na to laewedum mannum, ne ne sciendan na hy sylfe. Bisceopum gebyrað, gyf hwylcum hwaet eglige swyðe, þe he ne betan ne maege, cyþe hit his geferum and beon syððan ealle georne ymbe þa bote, and na ne geswican aer hi hit gebetan.* ("It is incumbent on bishops, if any one offend another, that he be patient until the arbitration of their associates, unless they can settle between themselves; and let them not refer to laymen nor disgrace themselves. It is incumbent on bishops, if aught greatly afflict any one, for

Probably even in the Anglo-Saxon period the further claim was raised that the clergy should be wholly freed from secular jurisdiction. How far the claim was in practice made good, is no longer with certainty to be ascertained.[14]

b. Competence in respect of causes.

In the older times an attempt was made to adjudicate in the diocesan synods upon purely temporal causes; to check it, prohibitions were issued by the higher authorities of the church.[15] Never-

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which he cannot obtain 'bōt,' that he make it known to his associates, and that they be then all diligent about the 'bōt' and cease not before they have obtained it.")—See also *Dialogus Egberti* c 10 in cases of civil claims.—On similar and still greater pretensions of the church in the Roman empire and the empire of the Franks see Richter, *Kirchenrecht* § 206.

[14] The view that clergymen were *not* subject to the secular court is supported by the passages cited in note 16, 1 and 2. according to which it seems that they could only be condemned by such a court after their expulsion from the priestly class. If we do not assume that even in the Anglo-Saxon period there were the beginnings of an exemption for clergymen from temporal jurisdiction, it is hard to say from when that exemption is to be dated. The ordinance of William I only provides an exclusive competence of ecclesiastical courts in respect of *causes*. The *personal* exemption of the clergy from temporal jurisdiction is confirmed in Stephen's charter of 1136 as something already existent. —The view that they *were* subject to the secular court is defended, on the other hand, by numerous provisions in the laws which relate to proceedings against clerks and which from their purport can hardly be referred to process before any other court than the folk-moot, *e.g.*: *Wihtrād* cc 16 19 *Edward and Guthrum* c 3; *Aethelred* VIII, 19-24, 27; *Knut* I c 5, II, c 41 § 1.—Similarly *Dialogus Egberti* (universally regarded as genuine and referred to archbishop Egbert of York, between 732 and 766; in Haddan and Stubbs, *Counc.* III, 403) cc 1 and 3.

From earlier times cf. especially *Dialogus Egberti* c 8: *Interrogatio: Si quis monachorum sacrilega se contagione miscuerint, vindicta, quidem sceleris si pertinet ad laicos, qui sunt eorum propinqui, nunc persequamini? Responsio* (the answers, both in reference to the person and to the case, go beyond the question): *De his qui intra aecclesiam in gravibus vel in levibus commissis delinquunt, nichil vindictae pertinet ad eos qui foris sunt; maxime cum apostolus dicat, omnes causas aecclesiae debere apud sacerdotes d'judicari. Si qui vero aecclesiastici crimen aliquod inter laicos* (in antithesis to *intra aecclesiam* to be understood of place) *perpetraverint, homicidium, vel fornicationem, vel furtum agentes, hos placuit a secularibus in quos peccaverunt omnimodo occupari; nisi animo fuerit aecclesiae pro talibus satisfacere. Laici vero qui sacrilega se contagione miscuerint velatis, non eodem modo quo lex publica fornicarios puniri percensuit, sed duplicato XXX siclorum pecunia, hoc est, LX argenteos volumus dare ecclesiae adulterantes, quia graves causae graviores et acriores querunt curas.*

[15] Report of the legates on the resolutions of the councils at *Pincahala* and *Celchyth*, 787, c 10: . . . *Vidimus etiam ibi Episcopos in conciliis suis secularia judicare, prohibuimusque eos voce Apostolica: Nemo militans Deo implicet se negotiis secularibus, ut Ei militet Cui se probavit* . . . (Haddan and Stubbs III, 452).—Cf. herewith the competence ascribed to the bishop in the penitential of Theodore (probably end of 7th cent.; printed in Haddan and Stubbs, *Counc.* III, 173):—

Book I c 4 § 5: *Si quis occiderit monachum vel clericum, arma relinquat et Deo serviat vel VII annos peniteat. In judicio Episcopi est. Qui autem Episcopum vel presbiterum occiderit regis judicium est de eo.*

Book II c 2 § 4: *Episcopus dispensat causas pauperum usque ad L solidos, rex vero si plus est.*

theless, even after that, the bishop and his officers are sometimes mentioned as judges in property suits. In some instances they seem to have been acting as arbitrators, in others we see the exercise of special judicial powers within church domains. But that any particular kinds of *civil* actions were in general brought within the cognizance of the ecclesiastical court is not apparent.

On the other hand, the church exercised a sort of *punitive* power, in that the ecclesiastical authorities, in a strictly circumscribed sphere of competence, imposed various forms of penance upon both clerks and laymen. In principle, indeed, the imposition of penance and the judicial power are two different things. The former, in so far as it is a condition of absolution, is an emanation of the *potestas ordinis*,[16] whilst the latter is a manifestation of the *potestas jurisdictionis*. Thus priests as well as bishops had the power to impose penance,[17] whereas the judicial power proper could only be exercised through the bishop, or his officers, or through synods. But in spite of this fundamental difference between the two things, in Anglo-Saxon times they frequently overlapped each other, and to outward observation the imposition of penance appeared to imply a punitive power resident in the church and supplementing the punitive power of the state.

For the most part penance was imposed informally and privately as the consequence of statements made in confession;[18] more rarely, for instance at visitations, there was something resembling judicial proceedings to bring home disputed guilt to the offender. The imposition was alike independent of the penalty threatened by the state and the sentence pronounced by it. Ecclesiastical penances were assigned for all more serious offences punishable also by the secular arm. The church assisted in securing the payment of the wergild, in that it reduced the penance when the payment was made.[19]

Furthermore, ecclesiastical penances were also threatened in cases (*e.g.* of sexual extravagance) for which the law of the land contained no penal provisions. This suggests that even in those early days there was the same exclusive competence in ecclesiastical courts as in later times. But the idea is a mistaken one. At a

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[16] Cf., however, Richter, *Kirchenrecht* § 257, note 9.

[17] Penitential of Theodore (Haddan and Stubbs III, 173), Book II c 2 § 15: *Non licet diacono laico penitentiam dare, sed Episcopus aut presbiter dare debent.* Book II c 6 § 16: *Nec non libertas monasterii est penitentiam secularibus judicandam, quia proprie clericorum est.* From later times compare one of the two collections of *capitula* ascribed to the council of Winchester, 1076 (Wilkins, *Conc.* I, 365) c 11: *Quod de criminibus soli episcopi poenitentiam tribuant.*

[18] Penitential of Theodore (Haddan and Stubbs, *Counc.* III, 173) Book 1 c 14 § 4: *Reconciliatio ideo in hac provincia puplice statuta non est, quia et puplice penitentia non est.*

[19] Penitential of Theodore (Haddan and Stubbs III, 173), Book I c 3 § 3; c 4 § 1. Canons ascribed to Theodore (Haddan and Stubbs III, 209) c 7. Penitential of Beda (Haddan and Stubbs III, 326) c 4 § 11; c 8 § 4; c 10 § 6 (anno VI). *Dialogus Egberti* (Haddan and Stubbs III, 403) c 12.

later age the church possessed exclusive competence in the sense that in certain domains the state was forbidden to interfere either by legislation or judicially. But in the Anglo-Saxon period the church alone had in some cases set forth commands and prohibitions; whilst the state had been willing to ignore the state of affairs existing. The church would seem to have desired the co-operation of the state in this department of morality as well as in other parts of the social life.

§ 60.

b. From the Norman conquest to the reformation.[a]

William I by an ordinance issued probably about 1070 laid the basis of a further development of independent ecclesiastical jurisdiction.[1] In this ordinance it is prescribed that, in future, cases *quæ ad regimen animarum pertinent* are to be tried not in the temporal court but in the bishop's court, and that if the summoned refuses to obey the call, the secular power has, if need be, to enforce his attendance.[2] Thus was a basis established for the exclusive competence of the ecclesiastical courts in respect to the *matters* cognizable. On the other hand, the ordinance contains no regulations as to the *personal* exemption of the clergy from temporal jurisdiction nor as to their exercise of judicial functions in temporal courts.[3] In these respects then the earlier provisions remained at first in force. But at latest from the accession of Stephen, the principle that clerks were amenable only to ecclesiastical courts was recognized. During the whole of the following period we find the authorities of the church persistently striving by means of the concessions of William I and Stephen to extend the competence of

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[1] The ordinance is printed in append. I.

[2] Cf. the resolutions of the council held by the archbishop of Canterbury at *Winchester*, 1076, in Matthaeus Parker, *De Antiquitate Britannicae Ecclesiae et Privilegiis Ecclesiae Cantuariensis, cum Archiepiscopis eiusdem* 70. Lambeth, 1572, p. 98. *Ex lib. Constitutionum Ecclesiae Wigorn. pag.* 101. [Printed also after Parker in Wilkins, *Concilia* I, 367]: . . . *Laici* . . . *si de crimine suo accusati fuerint, et Episcopo suo obedire noluerint, vocentur semel, et iterum, et tertio. Si post tertiam vocationem emendari* [Wilkins: *emendare*] *noluerint, excommunicentur. Si autem post excommunicationem ac* [Wilkins: *ad*] *satisfactionem venerint, forisfacturam suam quae Anglice vocatur oferhyrnesse seu lahslite, pro unaquaque vocatione Episcopo suo reddant* . . .

[3] Both contentions are often made. The words in § 2: *nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundret placita teneant* must be understood to mean the same as: *non causam quae ad regimen animarum pertinet, ad judicium secularium hominum adducant.* In § 4 to the words *nec aliquis laicus homo alium hominem sine justitia episcopi ad judicium adducat* we must supply *in causis quae ad regimen animarum pertinent.*

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[a] Bigelow, Melville Madison. *History of Procedure in England from 1066 to 1204.* London, 1880, pp. 25–75.—Friedberg, Emil. *De finium inter ecclesiam et civitatem regundorum judicio quid medii aevi doctores et leges statuerint.* Leipzig, 1861 § 3.—Gibson, *Codex*, tit. 47 and tit. 49.—Reeves, *History of the English Law*; especially cc 3 and 25.—Stubbs, *Const. Hist.* c 19 §§ 399–402.

the ecclesiastical courts as far as possible both in respect of persons and of causes cognizable. The endeavour is opposed with equal persistency by the state, which seeks to confine the operations of the ecclesiastical courts to such limits as would seem compatible with an orderly administration of law.[4] By degrees the number of points at issue came to be extraordinarily great. The development of the law was largely dependent on the usage of the courts. Henry II in the constitutions of Clarendon (1164) essayed legislation in this domain, but did not obtain the recognition of the church. Hence he even had in some measure, in the compromises of 1172 and 1176,[5] to yield to ecclesiastical pretensions. From the

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[4] It is often assumed that Henry I attempted to undo William's ordinance by a contrary regulation and so to restore the *status quo* of the later Anglo-Saxon period. But the assumption rests on an erroneous interpretation both of William's ordinance and of Henry's. The latter runs:—

Henricus, Rex Anglorum, Samsoni episcopo, et Ursoni de Abetot, et omnibus baronibus suis, Francis et Anglis de Wirecestrescira salutem. Sciatis quod concedo et precipio, ut amodo comitatus mei et hundreda in illis locis et eisdem terminis sedeant, sicut sederunt in tempore Regis Eadwardi, et non aliter. Ego enim, quando voluero, faciam ea satis summonere propter mea dominica necessaria ad voluntatem meam. Et si amodo exurgat placitum de divisione terrarum, si est inter barones meos dominicos, tractetur placitum in curia mea. Et si est inter vavassores duorum dominorum, tractetur in comitatu. Et hoc duello fiat, nisi in eis remanserit. Et volo et precipio, ut omnes de comitatu eant ad comitatus et hundreda, sicut fecerunt in tempore regis Eadwardi, nec remorent propter aliquam causam pacem meam vel quietudinem, qui non sequuntur placita mea et judicia mea, sicut tunc temporis fecerunt. (Rymer, *Foedera* 4th Ed. I, 12. A somewhat different wording in *Cottonian Liber Custumarum* (*Rer. Brit. Scr.* No. 12) II, 649 and [*ad omnes fideles*] in the law-book, *Quadripartitus*, edited by Liebermann (according to whom the ordinance dates from 1109–11), p. 165.

This ordinance is referred to by the law-book (probably dating from 1110–18) *Leg. Henr. I* c 7, which then declares the law in regard to the holding of county courts to be:—

§ 2. *Intersint autem episcopi, comites, vicedomini, vicarii, centenarii, aldermanni, praefecti, praepositi, barones, vavasores, tungrevii et caeteri terrarum domini, diligenter intendentes, ne malorum impunitas, aut graviorum pravitas, vel judicum subversio, solita miseros laceratione conficiant.*

§ 3. *Agantur itaque primo debita verae christianitatis jura; secundo regis placita; postremo causae singulorum dignis satisfactionibus expleantur; . . .*

§ 2, as also the previously cited ordinance of Henry I, relates only to the duty of the clergy and of the bishops (as landowners) in particular to assist at temporal court-meetings. This duty had not been annulled by the ordinance of William I (see above, note 3). In § 3 *christianitatis jura* signifies not suits in matters *quae ad regimen animarum pertinent*, but church dues and other claims in which the church was a party concerned or received part of the fine. See the *placita christianitatis* cited in c 11 of the same book. Cf. also the law-book (probably written at the beginning of the twelfth century), *Leg. Ed. Conf.* c 3: *Ubicunque justitia regis vel alia qualeibet justitia, cujuscunque sit, tenuerit placita vel justitiam, si minister episcopi* (according to another reading: *episcopus*) *fuerit et ostenderit causam sanctae ecclesiae, ipsa prius ad finem deducatur, ad quem finem poterit rationabilius eo die . . .*

[5] See § 4, notes 50 ff. Cf. also the articles passed by the clergy and barons of Normandy, 1190 (printed in Radulf de Diceto, *Ymagines Historiarum*, *Rer. Brit. Scr.* No. 68, II, 86 ff.).

middle of the twelfth century onward the heads of the church drew up a whole series of petitions[6] in which they laid before the king the various points wherein they desired a change in the procedure of the secular courts and of the executive officers. The king gave answer on each point singly, and gradually the church accustomed itself to act in accordance with these answers. A stage in the development was marked by the so-called statute *Circumspecte agatis* (an instruction of the king to his judges, combined with a clerical petition and the answer to it, probably dating from 13 *Ed. I* [1285])[7] and by the *Articuli Cleri*, generally called 9 *Ed. II* st. 1 (royal letters patent of 1316, containing a clerical petition and the answer to it by the king and his *consilium*).[8] The decisions laid down in these documents settled the more important points at issue. But controversy was not wholly stayed and led to several subsequent determinations of the law, notably the act, 18 *Ed. III* st. 3 (1344),[9] and the charter of Edward IV in 1462.[10]

1. Participation of ecclesiastical persons in temporal courts.

The two folk-moots, that of the hundred and that of the shire, at first continued to exist in Norman times. The competence of the hundred-moots was frequently limited, even in the Anglo-Saxon period, by the conferment of local jurisdiction,[10a] sometimes for the whole hundred,[10b] on temporal or spiritual landowners. Jurisdiction

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[6] Relevant here are :—

1. Petition of the English clergy, 1237; printed in *Annal. Burton* (*Rer. Brit. Scr.* No. 36; *Annales Monastici*) I, 254.
2. Complaint of the clergy and king's answer (*circ.* 1245 ?), printed in Cole, *Documents* 354.
3. Complaint of the clergy at the council of London, 1257; printed in Wilkins, *Concilia* I, 726.
4. Articles of the clergy, 51 *Hen. III* (1267/8); extract in Coke, *Inst.* II, 599.
5. Petition of the clergy from the years 1279–85 and king's answers; in *Historical Papers etc. from the Northern Registers* (*Rer. Brit. Scr.* No. 61) 70 ff. (The document stands among others of the year 1284.)
6. Petitions of the clergy, 1280 and 1300, with the king's answers; printed (in the petition of 1309) in Wilkins, *Conc.* II, 316 ff.
7. *Articuli episcoporum*, 1285, with king's answer; printed in Wilkins, *Conc.* II, 115.
8. Petition of the bishops of the province of Canterbury, 1285; printed in Wilkins, *Conc.* II, 117.
9. *Articuli, quibus videtur ecclesiae praejudicari per statuta domini regis ultimo edita in suo parliamento*, 1285. Wilkins, *Conc.* II, 119.
10. Petitions of the clergy, 1309. Wilkins, *Conc.* II, 314, 315 ff.

[7] Cf. § 4, note 71.
[8] Cf. § 4, note 107.
[9] Cf. § 4, note 109.
[10] Extract in appendix IX.

[10a] Henry Adams, *The Anglo-Saxon Courts of Law*, pp. 27 ff. in *Essays in Anglo-Saxon Law*, Boston, 1876, seeks to show that there is no proof of the express conferment of judicial powers on private persons before the time of Edward the confessor, though the practical exercise of such powers, though not conferred, may have begun earlier.

[10b] Cf. the instances collected by F. W. Maitland, *Select Pleas in Seignorial Courts*, Introduction p. xxvi; for the Selden Society, 1889.

was also so conferred under the Norman kings. The hundred-moot soon had an offshoot in the *turnus vicecomitis*, a sort of control assembly, which was held in each hundred twice a year and at which the *vicecomes* (=sheriff), besides transacting other business, imposed penalties for breach of the peace. The old hundred-moots fell into decay. The judicial powers of the shire-moots were lost by degrees—except in minor cases—to the royal courts. Except in so far as jurisdiction passed to the king's supreme court, for the old meetings of the shire-moot were substituted the assizes held in the shire by itinerant judges sent there from the court. These assizes became more and more general from Henry II's time onward. Judgment by members of the assembly of the shire was gradually replaced by establishment of the facts and presentment by bodies at first variously constituted but gradually assuming form as juries for civil matters, juries for criminal cases and juries of presentment.[11]

Private jurisdiction could belong to either temporal or spiritual persons.[12]

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[11] In the twelfth century there were—apart from urban courts—the following temporal courts:—

A. Private courts of the temporal or spiritual lord of manor (=*curiae baronum, magnatum, dominorum*).

[From the end of the thirteenth or beginning of the fourteenth century the following courts of private jurisdiction began to be distinguished:—

1. The court-customary.
   In this the business of the villenage was transacted. The judge was the lord of the manor or his deputy.
2. The *curia baronis* (=court baron), in a narrower sense.
   This was competent to deal with the civil causes of the free dwellers on the manor.
3. The *leta* (later on called 'courtleet').
   This had criminal jurisdiction in minor cases over all inhabitants of the district.]

B. People's courts.

1. *Curia parva hundredi* (=the old *hundredgemot*).
   Competent for civil causes in which no private court was competent. Its penal powers passed to the private courts and to the form of the hundred-moot which was designated *turnus vicecomitis*. The judges were the suitors.
2. *Curia comitatus* (=*scirgemot*).
   Competent for minor civil and intermediate criminal causes. The judges are the suitors. Jurisdiction in more important business was transferred by degrees to the supreme king's court and to the judges of assize. The assizes were at first regarded as a form of the shire assembly.

C. King's courts.

1. *Turnus vicecomitis*=*curia magna hundredi* (=great court-leet).
2. Forest courts.
3. Assize courts.
4. The *curia regis*.
   The judges in these courts are royal officers, the *vicecomes* (=*scirgerêfa*) and *justiciarii*.

Cf. on the above Gneist, *Verfassungsgesch.* § 10, § 19 II and III; F. W. Maitland, Introductions to *Select Pleas of the Crown* and *Select Pleas in Manorial and other Seignorial Courts* (Selden Society, 1888 and 1889); Stubbs, *Const. Hist.* I, 114 ff., 424 ff. c 5 § 46, c 6 §§ 128, 129.

[12] *Instituta Cnuti* (Schmid, append. XX; a law-book, probably shortly after

At the ordinary courts of the hundred and the shire had to appear the lords of land and all royal and local officials, spiritual and secular alike, among them also bishops. If the lord of land and his deputy was prevented from appearing, then, at latest from the middle of the twelfth century, there had to come to the assembly the reeve, the parish priest and four men of credit in the township;[13]

1110) III c 58: *Quid episcopi in saecularibus legibus: Episcopi imprimis ecclesiasticam habeant correctionem et christianam dominationem super omnes, quos debent docere et ante judicium Dei eos ducere et praeire; in multis tamen locis secundum justitiam in sua propria terra et in suis villis debent habere constitutionem hundredi, quod Angli dicunt 'hundred setene' et pretium latronum intra terminos eorum proclamatorum et infectam invasionem, quod dicitur 'unworte hamsocne,' toll et team et correctionem latronum, quousque sint condemnati ad mortem.*

Leges Henrici I c 20 § 2: *Archiepiscopi, episcopi, comites et aliae potestates, in terris propriae potestatis suae, sacam et socnam habent, tol et theam et infongentheaf; in caeteris vero per emptionem, vel cambitionem, vel quoquo modo perquisitis, socam et sacam habent, in causis omnibus et hallemotis pertinentibus, super suos et in suo, et aliquando super alterius homines . . .*

Leg. Ed. Conf. (law-book; probably beginning of 12th cent.) c 4: *Quicunque de ecclesia tenuerit, vel in feudo ecclesiae manserit, alicubi extra curiam ecclesiasticam non placitabit, si in aliquo forisfactum habuerit, donec, quod absit, in curia ecclesiastica de recto defecerit.* c 21: *Archiepiscopi, episcopi, comites, barones et milites suos et proprios servientes suos, scilicet dapiferos . . . sub suo friðborgo habebant* (another MS.: *habeant*) *. . . ; quod si ipsi forisfacerent, et clamor vicinorum insurgeret de eis, ipsi haberent eos ad rectum in cur ia sua, si haberent sacham et socham, tol et theam et infangenethef.*

[13] *Leg. Hen. I* (law-book; probably 1110–1118):—

c 7. *De generalibus placitis comitatuum, quomodo vel quando fieri debeant.*

§ 2. *Intersint autem episcopi, comites, vicedomini, vicarii, centenarii, aldermanni* (on the meaning of this word see note 15), *praefecti, praepositi, barones, vavasores, tungrevii et caeteri terrarum domini, . . .*

§ 7. *Si quis baronum regis vel aliorum comitatui secundum legem interfuerit, totam terram, quam illic in dominio suo habet, acquietare poterit* (the sense seems to be: "then the other inhabitants need not come"). *Eodem modo est, si dapifer ejus legitime fuerit.* [Somner proposes to read *interfuerit. Dapifer* = senescallus, steward, the chief domestic officer, court-holder and deputy of baron.] *Si uterque necessario desit, praepositus* (=*tungerêfa?*) *et sacerdos et quatuor de melioribus villae adsint pro omnibus, qui nominatim non erunt ad placitum submoniti.*

§ 8. *Idem in hundredo decrevimus observandum in locis et vicibus et judicum observantiis, de causis singulorum justis examinationibus audiendis, de domini et dapiferi, vel sacerdotis et praepositi et meliorum hominum praesentia.*

c 8. *De hundretis tenendis.* (The reference is not to the old hundred-moot but to the *visus francplegii* [view of frankpledge], from which the *turnus vicecomitis* was developed.)

§ 1. *Speciali tamen plenitudine si opus est, bis in anno conveniant in hundretum suum quicunque liberi, tam hudefest, quam folgarii, ad dinoscendum scilicet inter caetera si decaniae plenae sint, vel qui, quomodo, qua ratione recesserint, vel super accreverint. Praesit autem singulis hominum novenis decimus, et toti simul hundreto unus de melioribus, et vocetur aldremannus, qui Dei leges et hominum jura vigilanti studeat observantia promovere . . .*

apparently it was not until the end of the twelfth or beginning of the thirteenth century that the reeve and the four representative men invariably attended. In addition to the former probably every free man had access.[14]

The dignity of ealdorman, in its earlier sense, no longer existed.[15] Thus his presence at the county court ceased to be required. Similarly the attendance of the bishop is only enjoined if he is a landlord in the county in question. Moreover by special privilege the prelates, like the greater barons, were gradually relieved from the duty of appearing at the folk-moot.[16]

In the middle of the thirteenth century every free man was allowed to send an agent or representative (*attornatus*, attorney) either to a private court or to the folk-moot instead of being present in person.[17]

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c 31. *De capitalibus placitis.*

§ 3. *Interesse comitatui debent episcopi, comites et caeterae* [two MSS. have for *caeterae, ecclesiae*] *potestates, quae Dei leges et seculi negotia justa consideratione diffiniant.*

Cf. further the ordinance of Henry I (above, note 4) and the *Assize of Clarendon*, 1166 (Stubbs, *Sel. Chart.* p. 143) c 8: *Vult etiam dominus rex quod omnes veniant ad comitatus ad hoc sacramentum faciendum* (the oath of the representatives of the hundreds and townships to speak the truth in connexion with the inquest of the judges for robbers, murderers and thieves), *ita quod nullus remaneat pro libertate aliqua quam habeat, vel curia vel soca quam habuerit, quin veniant ad hoc sacramentum faciendum.*

[14] On the constitution of these assemblies see Stubbs, *Const. Hist.* I, 128, notes 3, 4 c 5 § 50, I, 651, note 2 c 13 § 163, II, 215, note 1 c 15 § 202. Cf. also Riess, *Geschichte des Wahlrechts* pp. 44 ff. The writ of Henry III, 4th Nov. 1217, forms the earliest extant instance of the summoning of a definite number of representatives from the several communities to the county court held by the itinerant judges. (*Rotuli Clausarum* [*Record Commission*] I, 380): *Rex Vicecomiti Ebor. salutem. Summone per bonos summonitores omnes Archiepiscopos Episcopos Abbates Comites et Barones milites et libere tenentes de tota Baillia tua, et de qualibet villa 4 legales homines et praepositum et de quolibet burgo 12 legales burgenses per totam Bailliam tuam et omnes alios de Baillia tua qui coram Justiciis itinerantibus venire solent et debent. . . .* Later instances of such summonses in *Rot. Claus.* I, 403 (year 1218), 473 (year 1220), 476 (year 1221), *Royal Letters* (*Rer. Brit. Scr.* No. 27) I, 395 (year 1235). Formularies in Bracton (*Rer. Brit. Scr.* No. 70) II, 188, 190.

[15] Cf. § 59, note 2. The place of the ealdorman had been taken after the conquest by a *comes* (=earl); but from the reign of Henry II 'earl' was a title without an office. See here Stubbs, *Const. Hist.* I, 132 c 5 § 50. At that time *aldermannus* often had its original meaning 'the eldest,' which is applicable to many different positions. On a particular kind of *aldermanni*, apparently heads of police in the hundreds see *leg. Hen. I* c 8 § 1 (printed in note 13).

[16] Example from time of Henry II (perhaps 1159) in *Chron. Monast. Abingdon* (*Rer. Brit. Scr.* No. 2) II, 222 (cf. 545): *Henricus . . . justiciis suis, in quorum bailliis abbas de Abbendonia habet terras, salutem. Permitto quod abbas de Abbendonia mittat senescallum suum, vel aliquem alium, in loco suo, ad assisas vestras et ad placita. Et ideo praecipio quod recipiatis senescallum suum, vel alium, quem ad vos miserit loco suo.*

[17] Letter of Henry III, 1234, *Ann. Dunstapliae* (*Rer. Brit. Scr.* No. 36. *Annales Monastici*) III, 139: *. . . ad . . . hundreda, wapenthakia, et curias* [*magnatum*], *non fiat generalis summonitio, sicut ad turnos. . . .* 20 *Hen. III* (1235/6) *Stat. Merton* c 9: *Provisum insuper quod quilibet liber homo qui sectam debet ad Comitatum, Trithingam, Hundredum, et Wapen-*

At the *turnus vicecomitis* too, spiritual persons had originally to appear as well as laymen. On those in higher station and on monks the duty ceased to be incumbent soon after the middle of the thirteenth century; but the right to summon them upon occasion was still retained; soon afterwards the same exemption was also applied to clerks.[18] [19]

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tachium, vel ad curiam domini sui, libere possit facere attornatum suum ad sectas illas pro eo faciendas.

Cf. also complaints of the clergy at the provincial council of *London*, 1257 (Wilkins, *Concilia* I, 726) c 35: *Item ratione hujusmodi possessionum* (*scil. per liberam eleemosynam*), *rex et alii magnates nituntur compellere episcopos, praelatos, et religiosos, et rectores ecclesiarum facere sectam ad curiam laicalem.* c 47: *Item, cum non consueverint praelati, vel viri ecclesiastici amerciari pro communibus summonitionibus in adventu justitiariorum, modernis temporibus amerciantur passim indifferenter, et graviter, si non compareant prima die tam coram justitiariis itinerantibus, quam coram justitiariis de foresta.* Similarly council of *Merton*, 1258 (Wilkins, *Conc.* I, 739 after *Ann. Burton*).

[18] 43 *Hen. III* (1259) c 10: *De Turno Vicecomitis provisum est ut necessarie non habeant ibi venire Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, nec aliqui religiosi seu mulieres, nisi specialiter eorum presencia exigatur; . . . set teneatur Turnus sicut temporibus predecessorum Domini Regis teneri consuevit. Et si qui in hundredis diversis habeant tenementa, non habeant necessarie ad hujusmodi turnum venire, nisi in ballivis ubi fuerint conversantes. Et teneantur Turni secundum formam Magne Carte Regis et sicut temporibus Regum Johannis et Ricardi teneri consueverunt.*

Similarly 52 *Hen. III* (1267) *Stat. de Marleberge* c 10.

Britton (*circ.* 1291/2), Book I c 30 § 2: *A queus tours touz les frauncs del hundred et autres terres tenauntz . . . deyvent venir, hors pris clers gentz de religioun et femmes.*

Cf. also W. Hudson, Introduction p. lxvii to *Leet Jurisdiction in the City of Norwich* (for the Selden Society, 1892).

[19] 1. The development in the case of the royal forest courts resembled that in the case of the *turnus vicecomitis*. (Cf. Stubbs, *Const. Hist.* I, 434 ff. c 11 § 130.)

Assize of Woodstock, 1184 (Hoveden [*Rer. Brit. Scr.* No. 51] II, 245; cf. Introduction to Benedict [*l.c.* No. 49] II p. clxi) c 11: *Item rex praecepit quod* [*archiepiscopi, episcopi*] *comites et barones et milites et libere tenentes et omnes homines veniant ad summonitionem magistri forestarii sui, sicut se defendi volunt ne incidant in misericordiam domini regis, ad placitandum placita domini regis de forestis suis, et alia negotia sua facienda in comitatu.* (Similarly the new form of this assize, promulgated in 1198, c 12; Hoveden [*Rer. Brit. Scr.* No. 51] IV, 64.)

Hoveden IV, 62, year 1198: . . . *supervenit aliud genus tormenti ad confusionem hominum regni, per justitiarios forestarum, videlicet per Hugonem Nevilla, summum justitiarium omnium forestarum regis in Anglia, qui cognominatus est Cuvelu, et per Hugonem Wac, et per Ernisium de Neville. Praedictis igitur justitiariis forestarum itinerantibus praeceptum est ex parte regis, ut per singulos comitatus, per quos ipsi ituri essent, convenirent coram eis ad placita forestae archiepiscopi, episcopi, comites et barones, et omnes libere tenentes, et de unaquaque villa præpositus et quatuor homines, ad audienda praecepta regis.*

Magna Carta of 1215, art. 44: *Homines qui manent extra forestam non veniant de cetero coram justiciariis nostris de foresta per communes summonitiones, nisi sint in placito, vel pleggii alicujus vel aliquorum, qui attachiati sint pro foresta. Carta de Foresta* of 1217, art. 2 almost identical.—Cf. complaints of the clergy in 1257 and 1258, above, note 17.

2. The establishment of justices of the peace was connected with a series of

The necessity for a priest to be present at a court meeting in order to conduct the ordeals[20] passed away owing to transformation of the mode of proof and the prohibition of ordeals by ecclesiastical synods.[21]

2. Ecclesiastical courts.

a. *Competence in respect of* persons.

In clear and, at the same time, comprehensive terms it was recognized for the first time in Stephen's charter of 1136 that spiritual persons, including inferior clerks, should be amenable only to ecclesiastical courts.[22] But the next king, Henry II, did not ratify the concessions that Stephen had made,[23] and they therefore, according to constitutional law as then understood, became deprived of their legal effect. Nevertheless, in criminal suits a considerable immunity of the clergy from secular jurisdiction still remained, just as even before Stephen's reign there had been some such immunity, though the measure of it can no longer be clearly ascertained.[24] Usage was,

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occurrences, the first perhaps falling in the reign of Richard I. The institution first became a permanent one by 34 *Ed. III* (1360/1) c 1. Gneist, *Verfassungsgesch.* § 19III. Stubbs, *Const. Hist.* I, 546 c 12 § 150 and preface p. C to Hoveden (*Rer. Brit. Scr.* No. 51), vol. IV.

[20] For the older regulations see § 59, note 9.—Cf. also the law-book (probably beginning of 12th cent.) *leg. Ed. Conf.* c 9: *De illis, qui judicium faciunt aquae vel ferri calidi: Assit ad judicium minister episcopi* (another reading: *episcopus*) *cum clericis suis, et justitia regis cum legalibus hominibus provinciae illius, ut videant et audiant, quod omnia aeque fiant, . . .*

[21] Cf. Bigelow, *Placita*, Introduction p. xvii; *Magna Carta* of 1215 c 38 (append. VII and note 23 there); ordinance of Henry III, 26th Jan. 1219, in Rymer, *Foedera* 4th Ed. I, 154. See also *Mirrour aux Justices* c 3 s 23.—Trial by combat survived for a considerable time and was not abolished by statute—though it had long been out of use—until the nineteenth century.

[22] *Ecclesiasticarum personarum et omnium clericorum et rerum eorum justitiam et potestatem et distributionem bonorum ecclesiasticorum in manu episcoporum esse perhibeo et confirmo.* See full text of charter in appendix II.—Cf. also Henry of Huntingdon (*Rer. Brit. Scr.* No. 74), Book VIII § 21 p. 276: *Octavo anno* (1143) *rex Stephanus interfuit concilio Lundoniae in media Quadragesima. Quod, quia nullus honor vel clericis vel ecclesiae Dei a raptoribus deferebatur, et aeque capiebantur et redimebantur clerici ut laici, tenuit Wintoniensis episcopus, urbis Romanae legatus, concilium apud Lundoniam, clericis pro tempore necessarium. In quo sancitum est, ne aliquis qui clerico violenter manus ingesserit ab alio possit absolvi quam ab ipso papa, et in praesentia ipsius; unde clericis aliquantulum serenitatis vix illuxit.*

[23] Cf. § 4, near note 35.

[24] Cf. § 59, note 14.—The contradictions that the law-book (probably written 1110–18) *leges Henrici I* contains in this respect are explained partly by the absence at the time of clear, generally recognized, law upon the subject, partly by the fact that the book is compiled by transcription and in many cases by alteration of widely different sources, Frankish and English, ecclesiastical and secular. (Whence each passage is taken is shown in Schmid, *Gesetze der Angelsachsen*; some of Schmid's indications are to be corrected in accordance with Liebermann in *Forschungen zur Deutschen Geschichte*, XVI, 582.) It is, furthermore, difficult to draw any inferences whatever from the book owing to the fact that it may be doubted whether from c 3 onward the law as it was in

furthermore, influenced in no slight degree by the bringing together of ecclesiastical decrees in the collections made in the eleventh and beginning of the twelfth century, and afterwards in the *Decretum* of Gratian (1141–50). Fixed rule of law upon the question it seems

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Edward the confessor's time or as it was in the author's is to be set forth. Schmid supposes the former, appealing to c 8 § 6: *Sed de hiis omnibus pleniorem suggerunt ventura notitiam sicut Edwardi beatissimi principis exstitisse temporibus certis indiciis et fida relatione cognovimus. Et si quid professoni nostrae congruum praecedentium vel sequentium capitula docuerint, sive jure naturali, vel legali, vel morali, gaudeant instituto, et hoc licet multa compositorum varietate minus plene peregerim, bonam saltem voluntatem ubique praetendo.* In spite of this passage we probably must rather hold that the author's intention was to give the law as it was in his own day. This view is favoured by the admission of the special provisions as to *Francigenae* in c 18; 48 § 2; 59 §§ 5, 20; 64 § 3; 75 § 6; 91 § 1; 92 §§ 10, 11 and others; by the admission of a charter of Henry I as cc 1 and 2; and by the commencement of c 7 § 1: *Sicut antiqua fuerat institutione formatum, salutari regis imperio, vera nuper est recordatione firmatum* (the ordin. on hundred-moots is meant, above, note 4). The reference to Edward in c 8 § 6 is to be explained by the fact that the first Norman kings always confirm the *leges Eduardi* to express that the old law was to remain fundamental. The following passages of *leg. Hen. I* are relevant here:—

c 5 *De causarum proprietatibus.*

§ 7. *Sancitum est in causa fidei vel ecclesiastici alicuius ordinis, eum judicare debere, qui nec munere impar sit, nec jure dissimilis; et nihil fiat absque accusatore . . .*

§ 8. *Sicut autem nec clerici laicos, ita nec laici clericos in suis accusationibus vel infamationibus debent recipere.*

§ 22. *Qui sacerdotem ante familiarem commonitionem apud suos judices aliquando, vel apud seculares unquam accusaverit, anathema sit.* [Cf. in Richter § 206, notes 24 ff. the Frankish regulations to the same effect.]

c 52 *De proprio placito regis.*

§ 1. *Si quis de placito proprio regis implacitetur a justitia ejus, . . .*

§ 2. *Clericus per consilium praelati sui vadium dare debet, cum dederit in accusatione.*

c 57 *De querela vicinorum.*

§ 9. *Cum clerico, qui uxorem habeat et firmam teneat laicorum, et rebus extrinsecis seculariter deditus sit, seculariter est disceptandum. De illis, qui ad sacros ordines pertinent, et eis, qui sacris ordinibus promoti sunt, coram praelatis suis est agendum de omnibus inculpationibus, maximis vel minoribus.*

c 64.

§ 2. *In furto et murdro et proditione et incendio, et domus infractione et eis quae ad disfactionem pertinent* (=for which the punishment is mutilation), *omnes fracto sacramento* (a solemn form of the oath; in what it consisted is disputed) *jurent in Westsexa, exceptis thainis, et presbyteris, et eis qui legalitatem suam in nullo diminuerunt. Hii de quacunque compellatione, capitali vel communi, plane jurabunt* (the simplest form of oath), *congruo numero consacramentalium . . .*

§ 3. *Missae presbyteri et secularis thaini jusjurandum in Anglorum lege computatur aeque eorum; . . .*

§ 8. *Sacerdos qui regularem vitam ducat, in simplici accusatione solus, in triplici cum duobus ordinis sui juret. Diaconus in simplici compellatione cum duobus, in triplici cum sex diaconibus se allegiet. Plebejus sacerdos purget se sicut regularis diaconus. Presbyter, ab episcopo vel archidiacono suo accusatus, se sexto juret sacerdotum legitimorum, sicut ad missam paratorum.*

there was not. Henry II in 1163 made an attempt by means of negotiations with Becket to arrive at some definite principle. But no agreement was reached.[25] In the constitutions of Clarendon (1164) a regulation on the subject was drawn up which is probably to be interpreted as follows: clerks were in all criminal cases to obey the summons to the king's court and there to make answer so far as the court thought fit; subsequently proceedings before an ecclesiastical court were to take place in the presence of persons sent by the temporal judge to see how the matter was dealt with

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[25] On this negotiation cf. especially: Roger de Hoveden (*Rer. Brit. Scr.* No. 51) I, 219: *Eodem anno* (1163) *gravis discordia orta est inter regem Angliae et Thomam Cantuariensem archiepiscopum, . . . Rex enim volebat presbyteros, diaconos, subdiaconos, et alios ecclesiae rectores, si comprehensi fuissent in latrocinio, vel murdro, vel felonia, vel iniqua combustione, vel in his similibus, ducere ad saecularia examina, et punire sicut et laicum. Contra quod archiepiscopus dicebat, quod si clericus in sacris ordinibus constitutus, vel quilibet alius rector ecclesiae, calumniatus fuerit de aliqua re, per viros ecclesiasticos et in curia ecclesiastica debet judicari; et si convictus fuerit, ordines suos amittere; et sic alienatus ab officio et beneficio ecclesiastico, si postea forisfecerit, secundum voluntatem regis et bailivorum suorum judicetur.*—Letter of the bishops of the province of Canterbury friendly to the king, addressed to the pope, June, 1166 (Hoveden I, 266): . . . *Qui* (the king) *cum pacem regni sui, enormi insolentium quorundam clericorum excessu, non mediocriter aliquando turbari cognosceret, clero debitam exhibens reverentiam eorundem excessus ad ecclesiae judices retulit episcopos, ut gladius gladio subveniret, et pacem quam regebat et fovebat in populo, spiritualis potestas fundaret et solidaret in clero. Qua in re partis utriusque zelus innituit: episcoporum in hoc stante judicio, ut homicidium, et si quid ejusmodi est, exauctoratione sola puniretur in clero: rege vero existimante poenam hanc non condigne respondere flagitio, nec stabiliendae paci bene prospici, si lector aut acolytus perimat quenquam praeclara nitentem virum religione vel dignitate, ut sola jam dicti ordinis amissione tutus existat.*—Gervasius, *Chronica* (*Rer. Brit. Scr.* No. 73) I, 174: *Rex autem . . . jura ecclesiastica quaerebat conterere, et quoslibet clericos ad saecularia judicia contorquere. Sed cum vidisset archiepiscopum Cantuariensis ecclesiae suis conatibus velle resistere, occasione cujusdam clerici quem archiepiscopus citra canonum auctoritatem sustinere noluit in foro saeculari de crimine sibi objecto contendere, nec, si in ecclesiastico judicio convinceretur, voluit quamvis exauctoratum saecularibus potestatibus relinquere puniendum.*—According to Grim, *Vita S. Thomae* (*Materials for the History of Thomas Becket; Rer. Brit. Scr.* No. 67) II, 374, the quarrel began because a sheriff wished to put on trial again a clerk who had been charged with homicide and acquitted by the ecclesiastical court. According to Willelmus Cantuariensis, *Vita S. Thom.* (*l.c.* I, 12), the king, *forsan zelo justitiae ductus*, caused the new proceedings.

These and similar accounts show that the king from the outset conceded that the preliminary decision lay with the ecclesiastical court; the dispute seems essentially to have turned only on the point, whether in the case of graver offences after the deposition of the guilty person by the ecclesiastical court there should be a further punishment by the secular court for the same offence. With this view the substance of the constitutions of Clarendon coincides. The proceedings reported by Grim and Willelmus Cantuariensis against a clerk *acquitted* by the episcopal court show, it is true, that in that particular case the king endeavoured to make good a more extensive claim; he did not, however, persist, and the clerk was by request at once delivered up again to the archbishop, without judgment being pronounced by the secular court.

(the question who was to decide on the extent of the proceedings before the ecclesiastical court was left open); if then the clerk was convicted or confessed, he was to be delivered up to the secular court to be by it sentenced and punished.[26] However, this provision of the constitutions of Clarendon was rejected by the pope. The treaty of Avranches (1172) contained no specific declaration either way.[27] An agreement upon the question was subsequently made (1176) between the king and legate Hugo. It laid down that, in criminal cases, for the future no clerk should be brought in person before a secular judge except for some offence against the forest laws or in respect of some service due by reason of feudal tenure to the king or some other temporal lord.[28]

The *principle* was thus recognized that in *criminal* procedure against spiritual persons, so far as it was directed against the *persons* of the offenders, the ecclesiastical court had to give judgment.[29] This was frequently afterwards confirmed.[30] The concessions on

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[26] c 3: *Clerici retati et accusati de quacumque re, summoniti a justitia regis, venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiae regis quod sit ibi respondendum, et in curia ecclesiastica unde videbitur quod ibidem sit respondendum. Ita quod justitia regis mittet in curiam sanctae ecclesiae ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de caetero eum ecclesia tueri.*—The interpretation reproduced in the text is established by F. W. Maitland in *The English Historical Review*, 1892, pp. 224 ff.

[27] Cf. § 4 notes 50, 51.

[28] . . . *Videlicet quod clericus de caetero non trahatur ante judicem secularem in persona sua de aliquo criminali, neque de aliquo forisfacto* (Roger de Wendover translates *forisfactum* by *transgressio*; but compare below, note 47), *excepto forisfacto forestae mea, et excepto laico feodo unde michi vel alii domino seculari laicum debetur servitium; . . .* (Printed more fully in § 4, note 54; the words *criminali* and *forisfacto* indicate here the opposition between graver and minor offences.)

[29] The ecclesiastical court had, of course, as in the Anglo-Saxon period, sole competence in disciplinary proceedings against clerks or higher spiritual persons.—Cf. also 1 *Hen. VII* (1485) c 2: . . . *qil soit loiall a toutz erchevesqes et Evesqes et autre Ordinaries aiantz episcopall jurisdiccion, de punier et de chastiser tiels presters Clerks et hommez religiousez esteantz dedeinz les boundez de lour jurisdiccion quels seront convictez devant eux . . . de advoutrie* (=adultery) *fornicacion incest ou auscun auter carnall incontinencie, par committance de eux agarder all prison illoqes a demurer par tiell temps come semblera a lour discrecions conveniant pur la qualite et quantite de lour trespas, . . .*

[30] For example, *Articuli episcoporum*, 1285, c 5: *ut clerici incarcerati, quoties et quando requiruntur, restituantur praelatis, sicut alias est concessum. Responsio regis: Cancellarius intelligit, quod clerici capti debent statim episcopis restitui, quotiens regem vel justitiarios requiri contingit.* (Wilkins II, 115.)

An inference is drawn from this recognition in 52 *Hen. III* (1267) *Stat. de Marleberge* c 27: *Si clericus aliquis pro crimine aliquo vel recto quod ad coronam pertineat arrestatus fuerit et postmodum de precepto Regis in ballium traditus vel replegiatus extiterit, Ita quod hii quibus traditus fuerit in ballium eum habeant coram Justiciariis; non amercientur de cetero illi quibus traditus fuerit in ballium, vel alii plegii sui, si corpus suum habeant coram Justiciariis, licet coram eis propter privilegium clericale respondere nolit vel non possit.*

the part of the state reached their greatest extent in Edward IV's charter of 1462, ratified in 1484 by Richard III.[31]

By the usage of the courts the privilege granted to the clergy was in and after the thirteenth century extended to all persons who could read.[32] On the other hand, in accordance with ecclesiastical rulings, those clerks who had married twice or had married a widow were regarded as laymen and therefore not entitled to claim the immunity from lay judgment.[33] Decision on the preliminary question sometimes raised, whether the accused was to be considered a clerk, was left, after some uncertainty of usage, to the ecclesiastical courts.[34]

By *privilegium cleri* (benefit of clergy) was understood in this and the following period, not only as to procedure, the immunity already indicated, but also as to penalties, exemption from death or mutilation.[35] In so far as the clerk was not bound to answer in a

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[31] Extract from the charter of 1462 in append. IX.

[32] Cf. Reeves, *Hist. of Engl. Law* c 27, Ed. 1869, III, 164 ff. This continued to be the practice even after 25 *Ed. III* st. 6 c 4 (printed below, note 44), indeed as long as the privilege lasted.—Yet judicial decisions to the contrary occur, *e g.* 26 *Ass.* 19 (cited in Reeves, *l.c.*, 3rd Ed. III, 139).—The privilege was first extended to women by 21 *Jac.* I (1623/4) c 6 and 3 *Gul. & Mar.* (1691) c 9 s 6, when it had come to imply a mere mitigation of punishment, not a special exemption from temporal jurisdiction.

[33] *Leg Hen. I* c 57 § 9 (above, note 24). *Liber Sextus* I, 12 c 1 *Gregorius X in concilio generali Lugdunensi* (1274): *Altercationis antiquae dubium praesentis declarationis oraculo decidentes, bigamos omni privilegio clericali declaramus esse nudatos, et coërcitioni fori saecularis addictos, consuetudine contraria non obstante. Ipsis quoque sub anathemate prohibemus deferre tonsuram vel habitum clericalem.*

4 *Ed. I* (1276) *Stat. de Bigamis* c 5 likewise declares the temporal judge competent.

Fleta, Book I c 32 § 34: *Bigami vero et Sacrilegi ab omni Privilegio Clericali sunt interdicti, non obstante in Consilio Lugdun. ejusdem Constitutionis revocatione. Mirrour aux Justices* c 3 s 5: *Exception de Clergy est ascun foits encomberable par replication de Bigamy en cest manere: . . .*

The above axiom of law is also assumed in 18 *Ed. III* (1344) st. 3 c 2: *Item qe si nul clerk soit areinez devant noz Justices a notre suyte, ou a la suite de partie, et le clerk se tiegne a sa clergie alleggeant qil ne doit devant eux sur ce respoundre, et si homme lui surmette pur nous, ou pur la partie qil eit espusez deux femmes ou une veue, qe sur ceo les Justicz neient conisance ne poer de trier, par enquestes ou en autre manere, la bygamye, einz soit mandez a la Court Cristiene, come ad este fait en cas de bastardie; et tantqe la certification soit mande par lordinarie, demoerge la persone, en quele bigamie est alegge par les paroles susditz ou en autre manere en garde; sil ne soit meinpernable.*

[34] *Mirrour aux Justices* c 3 s 5: *. . . Et pur ceo que appent a dire, en quelle point Clerke est Bigame, si que la Bigamy soit triable en Laïc Court, si jurées, nequidant dient que ils ne scavoient; adonques appent celle certification venir del Ordinary al maundement le Roy si come en case de matrimony dédit.*—18 *Ed. III* (1344) st. 3 c 2 (note 33).—Charter of Edward IV in 1462 (append. IX).—Similarly the ecclesiastical courts decided in cases where the question arose, whether a person had taken the monastic vow or not. Bracton, Book IV tract. 6 c 7 § 1 (IV, 492), Book V tract. 5 c 20 § 6 (VI, 328). *Fleta*, Book VI c 19. For an instance in 1101 see Bigelow, *Placita Anglo-Normannica*, 79.

[35] 9 *Ed. II* st. 1 (1315/6) *Art. Cleri* c 15: *Item licet clericus coram seculari Judice judicari non debeat, nec aliquid contra ipsum fieri, per quod ad periculum mortis vel mutilacionem membri valeat perveniri . . .*

secular court, this exemption from death or mutilation was a matter of course, in that ecclesiastical courts never inflicted these punishments. Beyond that, the limitation of the forms of punishment was never in principle recognized by the state, though in particular cases, especially if the higher clergy were concerned, the authorities generally abstained from imposing the penalty of death, or at least from carrying the sentence into execution.[36]

Attempts substantially to limit the immunity of the clergy begin again with the reign of Henry VII.[37] It is, however, to be observed that in the whole period from Henry II to Henry VII that immunity was, indeed, a recognized principle, but a principle subject to exceptions which rendered it possible for the royal officers to intervene in securing from the clergy respect for civil enactments or for the injunctions of temporal authorities.[38]

In this connexion the following matters are to be considered :—

1. *The preliminary proceedings in the secular court.*

It was not the office of the secular judge to consider whether the accused was a clerk or not, unless the ordinary, or during certain periods perhaps also if the accused,[39] demanded to be delivered up to the ecclesiastical court. This demand could, it seems, originally be put forward at any stage, alike before examination and after condemnation. If it was not put forward—which for various causes frequently happened—then judgment was passed, and for the most part sentence carried out by the secular powers upon clerks no less than laymen. Usage, however, seems in all these respects to have varied in the thirteenth century.[40] Under Henry VI the practice of the courts finally caused the further

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[36] Cf., however, the passages cited in note 40 below from Bracton and that in note 80 from *Fleta*.—Archbishop le Scrope of York was executed in 1405 after being found guilty of high treason. Stubbs, *Const. Hist.* III, 52 c 18 § 312, seems to be of opinion that the execution was illegal, on what grounds is not quite clear. Some examples of executions of inferior clergy after condemnation in the secular court will be found in Reeves, *Hist. of Engl. Law* c 16, 3rd Ed. III, 138; cf. further *e.g. Annales Paulini* (*Rer. Brit. Scr.* No. 76) I, 355, year 1332.

[37] Cf. below, near notes 69 ff.

[38] A restriction on these exceptions is contained in 18 *Ed. III* (1344) st. 3 c 1: *qe nul Ercevesqe ne Evesque ne soit empeschez devant noz Justices par cause de crime, si nous ne le comandons especialment, tantqe autre remedie ent soit ordeignez.* Cf. here the order of Henry IV, 28th Jan. 1400 (Rymer, *Foedera* 3rd Ed. III Pt. IV p. 176).

[39] That the *accused* could also demand to be delivered up to the bishop, is several times expressly admitted; especially in the charter of Edward IV, 1462 (in appendix IX). Cf. further *e.g.* 18 *Ed. III* (1344) st. 3 c 2. But in other places we find the necessity of application by the bishop referred to. Cf. Gibson, *Codex* 1124; Reeves, as quoted, III, 138; Letters of archbishop Peckham (13th and 29th March, 1284), in *Rer. Brit. Scr.* No. 77, II, 690, 699. Robert de Marisco (below, note 43), on the other hand, declares that only a *generale*, not a *speciale, mandatum* of the bishop was required.—See also Bracton, Book V, tract. 5 c 13 § 6 (VI, 240): *Et secundum quod dicitur, quod laicus non poterit renunciare foro seculari in praejudicium regiae dignitatis, eodem modo videtur quod nec clericus, si velit in causa criminali vel alia cujus cognitio pertineat ad ecclesiasticam dignitatem et ordinem clericalem, . . .* Similarly *Mirrour aux Justices* c 3 s 4.

[40] Cf. Stubbs, *Const. Hist.* III, 355 c 19 § 399.—Complaint of the clergy at the synod of *London*, 1257 (Wilkins, *Conc.* I, 726) c 15: *Item clerici sic capti* [*super*

limitation that neither bishop nor accused could demand surrender before any examination had been held, but that condemnation by the secular court—which, however, was not binding for the ecclesiastical court[41]—must precede surrender.[42] The introduction of preliminary civil proceedings was a later realization of the relevant part of the provision in the constitutions of Clarendon.[42a]

The first arrest of the criminous clerk could, at all times, be effected by the civil authorities.[43]

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aliquo crimine, furto vel homicidio, vel aliqua alia felonia] *plerumque in habitu clericali, inventi, antequam ab ordinariis ecclesiasticis repetantur, seu repeti possint, suspenduntur; et quandoque capita eorum raduntur, ut clerici non appareant et sicut laici judicantur. Quandoque cum repetuntur, differtur eorum liberatio ad tempus, et interim suspenduntur de nocte, vel hora prandii, ne ad notitiam ordinariorum valeat pervenire.*

It is probably to the case mentioned in the text, where no surrender was demanded, that we must refer the following statements (not otherwise reconcilable with the passage cited below, note 44) of Bracton (*circ.* 1230–57), in which he denies to the secular court the right of enforcing a penalty against clerks in criminal cases: Book V, tract. 5 c 2 § 5 (VI, 164): . . . *quamvis sunt qui dicant, quod de nullo placito tenentur* (the clerks) *respondere, nec ratione rei, contractus vel delicti coram judice seculari, et salva pace eorum, videtur quod fit in omnibus actionibus et placitis civilibus et criminalibus, praeterquam in executione judicii in causa criminali, ubi laicus condemnandus esset ad amissionem vitae vel membrorum, et quo casu, quamvis judex secularis habet cognitionem ut cognoscat de crimine, tamen non habet potestatem exequendi judicium sicut in causis civilibus, non enim possit degradare clericum,* . . . ; c 9 § 3 (VI, 206): *Si autem criminaliter* (in contrast to *civiliter*) *agatur et super crimine, judex ecclesiasticus non habebit jurisdictionem, licet habere debeat judicii executionem. In casu enim sanguinis judicare non potest nec debet, ne committat irregularitatem. Pertinet igitur* (*ut videtur*) *ad judicem secularem cognitio, et ad judicem ecclesiasticum judicii executio* , . . .

Cf. also complaint of the clergy and king's answer, 1279–85 (*Northern Registers; Rer. Brit. Scr.* No. 61, p. 70) c 15: *Item clerici incarcerati ex quacumque causa, civili vel criminali, sive delicto, non liberantur ordinariis, nisi primo per laicos, prolato judicio contra eos. Ad quintum decimum articulum respondetur sic: Rex deliberabit.* Letter of Peckham of 10th March, 1286 (*Rer. Brit. Scr.* No. 77; III, 919): *coram justiciariis . . . convictus, nobisque ordinario suo ipsorum justiciariorum judicio, ut moris est, liberatus carcerali custodiae mancipandus* . . .

[41] Cf. the contention of the clergy in 9 *Ed. II* st. 1 (1315/6) *Art. Clevi* c 16: . . . *quamquam confessio, coram illo qui non est judex confitentis, non teneat nec sufficiat ad faciendum processum, vel sententiam proferendum* . . .

[42] Hobart 289 and Keling 100, cited in Gibson, *Codex* 1124. These authorities are at variance whether in earlier times clergy might be prayed either before or after conviction (so Hobart), or only before conviction (so Keling, in Lisle's case). They agree in saying that in Henry VI's reign the practice had been introduced of requiring an offender to answer for his felony and then, after conviction, of allowing him, on demand, his clergy. See also Reeves, *Hist. of Engl. Law* c 22; 3rd Ed. III, 421. In regard to clerks in *holy* orders (that is: *ordines majores*) the contrary is laid down in Edward IV's charter of 1462 (append. IX). Cf. further preamble to 23 *Hen. VIII* c 1 (in note 44).

[42a] Cf. above, note 26.

[43] Treatise of Robert de Marisco on the *privilegium clericorum* in *Ann. de Burton* (*Rer. Brit. Scr.* No. 36; *Ann. Monastici*) I, 425, year 1258: *Nullus laicus debet clericum in custodia publica vel privata, etiam sine violentia et laesione, detinere, nec in publicam sive privatam custodiam aut carcerem detrudere; quod si quis facere praesumpserit, in canonem incidit latae sententiae, nisi clericus in graviori, puta furto, homicidio, incendio, et similibus*

Preliminary civil proceedings were of importance because they led to the demand that a person convicted in the civil (secular) court should not be allowed by the ecclesiastical court to escape unpunished. That demand was, indeed, raised; but never completely realized in practice.[44]

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deprehensus fuerit: deprehensi enim in delictis gravioribus comprehendi possunt et detineri in custodia, dummodo interveniat mandatum praelatorum quorum jurisdictioni sunt subjecti. Consuetudo tamen regni Angliae est, quae revera corruptela est, quod suspecti de gravioribus criminibus comprehendi possunt per ballivos regios, et in custodia publica detineri, donec episcopis fuerint liberati; nec requiritur speciale mandatum praelatorum, sed generale . . .

Cf. complaint of clergy and king's answer (*circ.* 1245? Cole, *Documents* 356) art. 11: *Item gravantur eo quod aliquando contingit quod Clerici sine delectu personarum, quamquam in facto deprehensi non fuerint, tanquam facinorosi vel suspecti de crimine vel injuria personali capiuntur per potentiam laicalem et in carcere detinentur nec redduntur ordinariis suis eos petentibus secundum canones judicandi. Responsio: Clerici propter homicidia et alia hujusmodi flagicia in facto deprehensi aut alii appellati seu puplice de hujusmodi notati et accusati, arestantur per potestatem secularem cum de subtractione vel fuga ipsorum timetur, et suis Prelatis ad eorum requisicionem judicandi postea liberantur.*

Writ of Edward I, 18th March, 1297 (*Lib. Custum., Rer. Brit. Scr.* No. 12, II, 213): *cum . . . Ecclesia . . . hanc libertatem habuerit ab antiquo, videlicet, quod nulli laici (? laico) liceat presbyteros seu clericos capere nec imprisonare, sine mandato nostro speciali, nisi fuerit pro aliquo quod contra pacem nostram seu prohibitionem nostram fuerit perpetratum . . .* In this writ it is prohibited that the night watchmen in London should arrest chaplains and other ecclesiastics for fornication and adultery and confine them in the Tun; *quorum* sc. *criminum correctio ad Forum Ecclesiasticum, et non ad Forum Laicum, manifeste dinoscitur pertinere.* The restriction contained in this writ was at the end of the fourteenth and in the first half of the fifteenth century no longer observed. (Riley, *l.c.* p. xxix, note 1 and glossary p. 831 *s.v.q.e. Tonellum.*)

The provisional arrest of clerks in *holy* orders is forbidden in Edward IV's charter of 1462 (append. IX).

[44] Bracton. *De Legibus etc.* (*circ.* 1230–57) lib. III, tract. 2 c 9 (*Rer. Brit. Scr.* No. 70, II, 298 ff.): § 1. . . . *Cum . . . clericus cujuscunque ordinis vel dignitatis, captus fuerit pro morte hominis, vel alio crimine et imprisonatus, et de eo petatur curia Christianitatis ab ordinario loci sicut archiepiscopo vel episcopo vel eorum officiali, vel aliis literas praedictorum deferentibus, imprisonatus ille statim eis deliberetur, sine aliqua inquisitione inde facienda, non tamen ut omnino deliberetur ut vagans sit per patriam, sed salvo custodiatur, vel in prisona ipsius episcopi vel ipsius regis, si ordinarius hoc voluerit, donec a crimine sibi imposito se purgaverit competenter, vel in purgatione defecerit, propter quae debeat degradari. . . .* § 2. *Cum autem clericus sic de crimine convictus degradetur, non sequitur alia poena pro uno delicto, vel pluribus ante degradationem perpetratis. Satis enim sufficit ei pro poena degradatio quae est magna capitis diminutio, nisi forte convictus fuerit de apostasia, . . . Si autem sit aliquis ordinarius qui in curia Christianitatis, clerico sic ei liberato, purgationem indicere (sine accusatore coram eo de novo accusante) noluerit, tunc fiat ei breve ex parte domini regis in hac forma.* § 3. *Rex tali ordinario salutem. Audivimus quod cum quidam clericus de morte hominis rectatus, vel appellatus vel indictatus coram justitiariis nostris productus esset, et ibi vobis sicut clericus liberatus, ut se coram vobis purgaret, et se inde redderet innocentem si posset, non vultis (ut dicitur) ad purgationem procedere, nisi sit aliquis, qui de novo coram vobis in foro ecclesiastico versus eum prosequatur, et instituat accusationem. Et quoniam per accusationem factam in curia nostra, de morte illa satis habetur suspectus, et per talem diffamationem*

2. *The several kinds of punishable acts.*

It was not in respect of *all* punishable acts that exemption from temporal jurisdiction could be claimed.

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et indictamentum, nihil aliud restat nisi quod coram vobis admittatur purgatio, quae quidem fieri deberet, si laicus esset in curia nostra, si ordo impedimentum non daret, et licet nullus sequeretur, nos pro pace nostra sequi deberemus. Vobis mandamus, quod secundum quae idem talis se purgaverit coram vobis, vel non, quod vestrum fuerit exequamini. Teste etc.

3 *Ed. I* (1275), *Stat. Westminster I*, c 2: *Porveu est ensement, que kaunt Clerk est pris por ret* (=charge) *de felonie, e il seit demaunde per le Ordinaire, il lui seit livere solum le privilege de Seient Eglise, en tiel peril com il iapent* (=*y append*), *solum les custumes avaunt ses oures usees; et le Rey amoneste les prelatz e lour enjoynt en la fei qil li deivent, e por le comun profit e la pees de la tere, que ceaux que sunt enditez* (=indicted) *de tiel ret par solempne enqueste des prodes homes fete en la Court le Rey, en nule manere ne les delivrent saunz duwe purgacion; issi qe le Rey neit mester* (=*métier*) *de metre i autre remedie.*

Petition of the clergy in 1280 and 1300 and the king's answer at the time (contained in the petition of the clergy in 1309, Wilkins, *Concilia* II, 318): *Item clerici capti pro suspicione criminis per potentiam laicalem, non statim, sicut de jure fieri debet, suis ordinariis, ipsis petentibus, liberantur, sed diu detinentur in carcere contra clericalem et ecclesiasticam libertatem. Ad istum articulum respondet rex et decrevit, ut clerici capti pro quocunque reatu per ballivos seculares, praelatis eorum requirentibus, liberentur; repraesentandi tamen ab eis in seculari judicio, cum fuerint requisiti, pronunciandi rei vel innocentes per justitiar, regis sub testimonio laicorum, ut hactenus fieri consuevit. Quodsi praelatus clericum hujusmodi non repraesentaverit, centrum libr. sterling. domino regi solvere compellatur.*

Item tales clerici, qui, postquam inquisitio laicorum ex officio tantum recepta, contra ipsos in foro seculari deponitur, suo ordinario, ut et justum, finaliter liberantur; . . . . , non libere, sed sub poena centum libr. pro evasione traduntur ordinariis memoratis. Ad istum articulum nihil respondetur, . . .

Britton (*circ.* 1291–2) Book I c 5 § 3: *Et si le clerk encoupé* (=*inculpé*) *de felonie alegge clergie, et il soit tel trové et par ordinarie demaundé, si soit enquis coment il est mescreu* (=*malecreditus*). *Et s'il ne soit mescru par certeyns resouns, qe les presentours ount puis de luy enquis, si soit ajugé tut quites. Et si il en soit mescru, si soynt ses chateus taxez, et ses terres prises en nostre meyn et soen cors deliveré al ordinarie. Et si le ordinarie ly delivere hors de sa prisoun avaunt due aquitaunce solom purgacioun des clers, ou si il le face si negligaument garder qe il eschape, ou si maliciousement le fet detener qe il ne peuse a sa purgacioun vener, et ceo soit atteynt, en chescun poynt soit le ordinarie en nostre merci; et solum ceo qe le ordinarie nous fra a saver de aquitaunce de tels clers, lour from nous fere restitucioun de lour biens, si il ne eynt defuyz nostre pes* (=*paix*).

Mirrour aux Justices (end of 13th or beginning of 14th cent.) c 3 s 4: . . . *si Clerke ordeiné entre en Court devant Laïc Judge pur respondre de personall trespas et nosmement en case criminal et mortel die que il est Clerke, le Judge ne poit pluis avant conustre, car le Esglise est cy en franchise que nul Judge ne poit aver conusance de Clerke tout le voilet Clarke conuster pur son Judge, en tiel case est sans delay deliverable a son Ordinaire. Pur doner nequidant actions al actors, vers les accessories en appeles et enditements, appent que le Judge tantost enquire de son office per serment de probes homes en la presence del Clerke lequel que il soit coulpable ou non. Et s'il en soit coulpable adonque est liverable a son Ordinarie, . . .*

25 *Ed. III* (1351/2) st. 6 c 4: *Item come les ditz Prelatz eient grerousement pleint enpriant ent remedie, de ce qe clercs seculers, auxi bien Chapelleins come autres, Moignes et autres gentz de religion, eient este treinez et penduz*

a. Treason.[45] By the agreement of 1176[46] the immunity from lay jurisdiction had been granted in respect of all punishable acts apart from offences against the forest laws and non-fulfilment of feudal obligations. Nevertheless, as is plain from several occurrences, the royal courts continued even after that agreement to sentence clerks in the gravest cases, particularly for the crime, then not precisely defined, of high treason.[47] How the secular courts based

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par agard (=award) *des Justices seculers . . . . , si est accorde et grante par le Roi, en son dit parlement, qe touz maneres des clercs, auxi bien seculers come religiouses, qi seront desore convictz devant les Justices seculers por qecomqes felonies ou tresons touchantes autres persones qe le Roi meismes ou sa roiale majeste, eient et enjoient franchement desore privilege de seinte eglise et soient saunz nule empeschement ou delai liverez a les Ordinaries eux demandantz. Et por ce grant le dit Ercevesqe promist au Roi, qe sur le punissement et sauve gard de tieux clercs meffesours, qe seront ency as Ordenares liverez, il enferroit ordenance convenable, par la quelle tieux clercs enserroient salvement gardez et duement puniz, ensi qe nul clerc emprendreit mes baudure* (= courage) *de ensi meffaire par defaute de chastiement.*

4 *Hen. IV* (1402) c 3 confirms the liberties of the church and clergy and refers to the fact that the archbishop of Canterbury for himself and the bishops of his province has promised that a constitution provincial shall be made, based on the constitution of archbishop Simon Islip (dated 12th March, 1351) according to which if, in future, *ascun clerk seculer ou religious qi soit convict de treson qe ne touche le Roy mesmes ne sa roiale majeste, ou qi soit commune laron . . .* shall be delivered to the bishop, the latter *gardera* (the offender) *sauvement et seurement.*

With the foregoing provisions of 3 *Ed. I* c 2 and 4 *Hen. IV* c 3 is to be connected 23 *Hen. VIII* (1531/2) c 1, in that it points out that the constitution to be made has never been *notefeyed ne shewed by the Prelates.* In this act earlier procedure is shown thus:—

. . . manyfest thevys and murderers indyted and founde gyltye of theyr mysdedes by good and substancyall inquestes upon playne and profeable evydence before the Kynges Justices, and afterward by the usages of the common lawes of the londe delyvered to the Ordenaryes as Clerkes convycte . . .

[45] In the twelfth and thirteenth centuries a special *crimen laesae majestatis* or *crimen proditionis* was classed with *homicidium*, *furtum* etc. All these graver offences were comprehended in the term *felonia.* (So, for example, *Leg. Hen. I* c 46 § 3 compared with c 47, c 48 § 1, Bracton I, 96; even in 25 *Ed. III* st. 5 c 2 we have in one place *treson ou autre felonie.*) The *crimen laesae majestatis* embraced not only high treason proper, but every violation of the king's rights; the idea was conceived sometimes in a wide, sometimes in a narrow sense, and in some writers includes a very large number of actions. On the development of the idea in the twelfth, thirteenth and fourteenth centuries see Stubbs, *Const. Hist.* III, 535 ff. c 21 § 463, Reeves, *Hist. of Eng. Law*, 3rd Ed. II, 8, 273, 349, 462 ff. Gradually felony became opposed to treason, the former term being limited to offences, other than treason, threatened with confiscation of property. The first more precise determination of treason is contained in 25 *Ed. III* (1351/2) st. 5 c 2. By it the following offences are to be adjudged to be treason: compassing or imagining the death of the king, his queen or his eldest son; violating the king's companion (=consort) or his eldest daughter unmarried or his eldest son's wife; levying war against the king in his realm; counterfeiting the king's seal or his money; bringing false money into the realm; slaying the king's chancellor or treasurer or any of the judges being in their places and doing their offices. Petit treason, by the same act, is when a servant slayeth his master, or a wife her husband, or *quant homme seculer ou de religion tue son Prelat, a qui il doit foi et obedience.*

[46] Cf. § 4, note 54, § 60, note 28.

[47] In the acts passed in the end of the 13th and in the 14th century surrender

their right to adjudicate in such cases is not determinable. A more exact limitation in this direction was brought about by 25 *Ed. III* (1331/2) st. 6 c 4.[48] The act granted privilege of clergy in all cases of 'felony' and 'treason' in which the offence was committed against other persons than the king himself

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to the ecclesiastical courts is only mentioned in case of 'felony.' It would seem as if the antithesis intended were rather to the lighter *transgressio* than to treason, in respect of the former of which the agreement reached in 1176 (after some vacillation in the practice of the courts about the middle of the thirteenth century) seems to have ceased to be considered applicable from the end of the thirteenth century. [Cf. the contrast of *felonia* and *transgressio* in Bracton, *Rer. Brit. Scr.* No. 70, II, 266, 312. The actions of *transgressio* (=trespass) probably grew originally out of the 'appeal of felony' by the omission of the words *in felonia* from the writ. The first actions of this nature before the royal courts of law that we can record date from the end of the twelfth century, their number increased slowly during the thirteenth century and only became considerable after the middle of the thirteenth century. At that time the 'action of trespass' was still treated as a criminal proceeding, and it was not till much later that it assumed the nature of a civil action. Maitland, *The History of the Register of Original Writs*, in *Harvard Law Review* III, 177 ff., 219, Nov., Dec. 1889.—Concerning the substitution of '*transgressio*' for '*forisfactum*' by Roger de Wendover in his account of the agreement of 1176 see § 4, note 54. See also Bracton VI, 492: . . . *nec debet dominus rex manus in eos* (clerks) *mittere, et cum in eos coertionem non habeat, maxime in delictis et transgressionibus sicut in majoribus criminibus*, . . . To the contrary: Prohibition (by Edward I?; printed below, note 79): . . . *cum cognitiones placitorum super . . . transgressionibus contra pacem nostram factis . . . ad coronam et dignitatem nostram pertineant.* Letter of Edward III, 12th May, 1343, to the pope with regard to proceedings before the papal court against the bishop of Chichester (Rymer, *Foedera* 4th Ed. II, 1223): . . . *licet . . . placita transgressionum et incarcerationum ibidem in curia nostra, et non alibi, tractari debeant et finiri . . .* .] Mention of surrender in cases of felony is made particularly in 3 *Ed. I* (1275) *Stat. Westminster I*, c 2 (printed above, note 44): *por ret de felonie.* 9 *Ed. II* st. 1 (1315/6) *Articuli Cleri* c 15*: Item licet clericus coram seculari Judice judicari non debeat, nec aliquid contra ipsum fieri, per quod ad periculum mortis vel mutilacionem membri valeat perveniri, seculares tamen Judices clericos ad ecclesiam confugientes et reatus suos forte confitentes, faciunt abjurare regnum, et eorum abjuraciones admittunt ex illa causa, quamquam eorum Judices super hiis non existant, sicque datur laicis indirecte potestas hujusmodi clericos trucidandi, si ipsos post hujusmodi abjuracionem in regno contigerit inveniri; . . . Responsio. Clericus pro felonia fugiens ad ecclesiam, pro immunitate ecclesiastica optinenda, si asserit se esse clericum, regnum non compellatur abjurare; set legi regni se reddens gaudebit ecclesiastica libertate, juxta laudabilem consuetudinem regni hactenus usitatam.* 25 *Ed. III* (1351/2) st. 6 c 5: *Item coment qe clerks aresnez de felonie devant Justices seculers . . . qe . . . feurent demandez par le Ordinaire . . .*

Cf. also *Mirrour aux Justices* c 3 s 5: *De autre parte est Clarke* (*i.e.* clergy claimed before the secular court) *encountreable d'autres replications come sil est connu pur murderer notoire, et de tiel condition que l'Esglise ne doit garranter ensuivant la peace le Roy.* (See Bracton II, 358.) Cf. further letters patent of 25 *Ed. III* (printed in *Statutes of the Realm* I, 329): Hitherto clerks who were counterfeiters of coin (the offence was treason, note 45) had been hanged on the 'award' of secular judges. Till a law on the subject is passed, they are to be imprisoned, without surrender to the bishop.—On two occurrences, 1266 and 1329-30, cf. *Annales Londonienses* (*Rer. Brit. Scr.* No. 76) I, 74 f., 245 f.

[48] Printed above, note 44.

and his royal majesty (*i.e.* against the rights of the crown). This restriction was never removed, at least by statute.[49]

b. Encroachment on the king's rights and contempt of the royal commands. Penalties in respect of the former were defensive; in respect of the latter they formed the only means of securing, in practice, obedience to civil regulations. In both cases rights were in question, which the state could not give up without altogether renouncing its independence. Although in the agreement of 1176 power to punish the clergy for such offences was not reserved, the punishment was, in all periods, imposed.[50]

c. Non-discharge of feudal obligations. In such matters according to the constitutions of Clarendon the secular court was to be competent.[51] This was a provision which the pope had not opposed. In the agreement of 1176 the secular court was expressly declared to be competent also in criminal cases relating to the feudal relation.[52] Now, the lands of the bishoprics and a large part of the lands of ecclesiastical foundations, especially of monasteries, were regarded as feudal holdings, and the most important obligations of landholders to the state were based on feudal law. Thus here again there was a very considerable limitation of clerical exemption especially for the higher ecclesiastics. A frequently recurring means of compelling feudal services was the 'taking in hand' of the fief by the king. Royal jurisdiction in this province was permanently upheld.[53]

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[49] This restriction is also contained, *e.g.* in 4 *Hen. IV* (1402) c 3 (printed in note 44).—Edward IV, however, in his charter of 1462 (append. IX) directed that even in case of *proditio*, clergy of the higher orders should be surrendered to the ecclesiastical courts.

[50] Compare, *e.g.* the complaint of the clergy and the king's answer (*circ.* 1245? Cole, *Documents* 357) Art. 16: *Item quod ridiculum est dicere, Episcopi et Prelati aliquociens capiuntur et personaliter arestantur, quod est contra Deum et justiciam, cum talium captores excommunicati sint ipso facto. Responsio: Secundum consuetudinem regni que pro lege habetur, omnes convicti in Curia Regis super usurpatione juris regii seu lesione regie libertatis et eciam omnes officiales qui Regi tenerentur ex suo ministerio, de satisfaccione congrua cautionem exhibere solent ante recessum suum.*

On compulsion by writ of prohibition cf. § 27, note 10; on the *amerciament* inflicted particularly in case of contempt of royal commands see below, near notes 64 ff.

[51] c 11: *Archiepiscopi, episcopi, et universae personae regni, qui de rege tenent in capite, et habent possessiones suas de domino rege sicut baroniam, et inde respondent justitiis et ministris regis, . . .* (Cf. appendix IV.)

[52] *. . . excepto laico feodo unde mihi vel alii domino seculari laicum debetur servitium.* (Cf. § 4, note 54.)

[53] Against *abuses* connected with 'taking in hand' (*prendre en main*) the following regulations from the reign of Edward III are directed: 1 *Ed. III* (1326/7) st. 2 c 2: *Et par ce qe avant ces houres, en temps le Roi pier au Roi qore est, Le Roi par malveys conseillers sanz cause et areynement fist prendre en sa meyn les temporalites des divers Evesqes, od toutz les biens et chateux en les dites temporalitees troveez, et mesmes les temporalitees tynt en sa meyn par long temps, et prist toutz les issues en mesmes le temps, a graunt damages des ditz Evesqes, vastz et destruccions de lor Chateux Manoirs Parks et Boys; Le Roi grant et voet qe desormes ne soit fait.* 14 *Ed. III* (1340) st. 4 c 3: *Et voloms et grantons por nous et por noz heirs, qe desorenavant nous ne nos heirs ne prendrons, nene ferrons prendre en notre main, les temporaltez des Erceveseqes, Evesqes, Abbees, Priours ou dautres de quel estat ou condicion qils soient, sanz veroie et jouste cause, selonc ley de terre et juggement sur ceo la done.*—Cf. also 25 *Ed. III* (1351/2) st. 6 *Ordinatio pro Clero* c 6: *. . . por ce qe les temporaltees des Ercevesqes et Evesqes ount este sovent foitz pris en la main le Roi, por contempt fait a lui sur le brief Quare non admisit, et ensement par plusures autres causes . . . ; si voet le Roi . . .*

d. Transgression of laws aimed against papal encroachments. The provisions that do not recognise the exemption of the clergy in this case are found scattered in the various pertinent enactments.[54] The secular courts were necessarily pronounced competent; otherwise, the execution of the laws would have been impossible.

e. Forest offences. The competence of the royal courts in regard to such offences was expressly reserved by Henry II in his compact with legate Hugo[55] and reaffirmed in later enactments.[56]

f. Oppressions and extortions by prelates and their officers. The church fought against control in the form of inquisition by the temporal judges into wrongs of this kind. But many provisions in the statutes show that

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qe touz les Justices qe rendront desore les juggementz contre nul Prelat . . . en tieu cas ou semblable, qils en tieu cas pussent franchement receivre et desore receivent por le contempt ensi ajugge fyn resonable de la partie ency condempnee, . . .

[54] Compare, *e.g.* 35 *Ed. I* (1306/7) *Stat Karlioli* c 1: . . . *Et si quis contra praesens statutum venire presumpserit, considerata qualitate delicti et regie prohibicionis pensato contemptu, graviter puniatur.* 25 *Ed. III* (1350/1) st. 4 *Stat. de Provisoribus: . . . soient les ditz provisours . . . attaches par lour corps, et menes en response, et sils soient convictz demoergent en prisone . . . tanqils averont fait fin et redempcion au Roi a sa volonte, et gree a la partie qe se sentera greve.* 27 *Ed. III* (1353) st. 1 *Stat. contra adnullatores Judiciorum Curiae Regis* c 1: . . . *qe totes gentz de la ligeance le Roi, de quele condicion qils soient, qi trehent nulli hors du Roialme . . . , eient jour . . . destre devant le Roi et son conseil ou en sa Chancellerie, ou devant les Justices le Roi . . . a respondre en lour propre persones au Roi du contempt fait en celle partie;* . . . [A mitigation for the prelates and nobles, but at the same time a confirmation of their indiscriminate subjection in this respect to the secular court, is contained in 38 *Ed. III* (1363/4) st. 2 c 1: . . . *sauf lestat des Prelatz et daltres seigneurs du roialme, touchant la libertee de lor corps, si qe par force de cest estatut lour corps ne soit pais pris.*] 38 *Ed. III* (1363/4) st. 2 c 3: . . . *Et si aucune persone de quelconqe estat ou condicion qil soit par quelconqe manere qe ce soit, attempte ou face aucune chose a lencountre des dites ordinances, ou daucune chose comprise en ycelles, soit la dite persone meisne a respounse, en manere come dessus est dit, et si elle serra sur ceo attainte ou convaincue, mise hors la proteccion le Roi, et puniz par fourme du dit estatut de lan 27.* c 4: . . . *soit tiel pleintif duement puniz a lordenance du Roi ou de son conseil,* . . .

[55] . . . *excepto forisfacto forestae meae.* (§ 4, note 54.)—Cf. *Cnuti Constitutiones de Foresta* (printed in Schmid, *Gesetze der Angelsachsen* as law III of Knut; a private compilation, not earlier than about 1110) c 26: *Episcopi, abbates et barones mei non calumniabuntur pro venatione, si non regales feras occiderint, et si regales, restabunt rei regi pro libito suo, sine certa emendatione.*

[56] *E.g.* assize of *Woodstock*, 1184 (Hoveden [*Rer. Brit. Scr.* No. 51] II, 245; cf. Introduction to Benedict [*l.c.* No. 49] II, p. clxi) art. 9: *Item rex defendit quod nullus clericus ei forisfaciat de venatione sua nec de forestis suis. Praecepit bene forestariis suis quod si invenerint eos forisfacientes, non dubitent in eos manum ponere, ad eos retinendum et attachiandum, et ipse eos bene warantizabit.* Similarly the reissue of this assize, 1198, c 10 in Hoveden IV, 64.—Cf., however, resolution of the ecclesiastical council of *Merton*, 1258 (Wilkins, *Conc.* I, 738, after *Annal. Burton*): *Clericus tamen super transgressione forestae coram suo ordinario canonice convictus, domino regi, vel alii damnum et injuriam passo, per eundem ordinarium satisfacere compellatur, et alias, arbitrio ordinarii sui, canonica poena puniatur.* Letter of archbishop Peckham, who had been summoned for an offence against the forest laws, to the judges, 2nd March, 1287 (*Regist. Epist. Peckham; Rer. Brit. Scr.* No. 77; III, 942).

power to exercise such control was maintained. Procedure is on the boundary between civil and criminal process.[57]

g. Relapse. Grave offences were punished by the ecclesiastical court in older times by deposition, in later by degradation. In the earlier period mere deposition implied also the loss of clerical orders.[58] Between Henry II and Becket a dispute raged whether, after ecclesiastical deposition (*exauctoratio*),

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[57] Inquisition articles of the itinerant royal officers, 1170 (Gervasius; *Rer. Brit. Scr.* No. 73; I, 219) c 11: *Et similiter inquiratur per omnes episcopatus quid et quantum et qua de causa archidiaconi vel decani injuste et sine judicio ceperint, et hoc totum scribatur.* Cf. also Britton (*circ.* 1291–2) Book I c 21 § 10.

5 *Ed. II* (1311) c 12: Those who purchase *prohibicions et attachementz* against the ecclesiastical ordinaries in purely ecclesiastical matters shall be punished . . . , *sauve lestat le Roi et de sa corone et autri droit.*

15 *Ed. III* (1341) st. 1 c 6: *Item acorde est qe les Ministres de seinte esglise pur diners* (=*deniers*) *prises por redempcion de corporele penaunce, ne por proeve et acompte des testamentz, ou pur travaille entour ceo mys, ne pur solempnete des esposailles, ne pur autre cause touchaunte la jurisdiction de seinte esglise, ne soient apeschez* (=impeached) *ne aresonez* (=arrested) *ne chacez a respoundre devant les Justices le Roi ne ses autres ministres. Et sur ceo eient les Ministres de seinte esglise briefs en la Chauncellerie, a les Justicez et autres ministres, totes les foiths qils les demanderunt.* (15 *Ed. III* st. 1 was repealed by royal letters patent, 15 *Ed. III* st. 2, *volentes tamen quod articuli in dicto statuto . . . contenti, qui per alia statuta nostra vel progenitorum nostrorum Regum Angliae sunt prius approbati, iuxta formam dictorum statutorum . . . observentur.*)

18 *Ed. III* (1344) st. 3 c 6. Lately there have been commissions issued to the royal judges *quils facent enquestes sur Juges de seinte eglise, le quel qils facent joust processe ou excesse en cause du testament, et autres les queux notoriement apartiegnent a la conisaunce de seint eglise;* in consequence *indictments* have been caused by the commissioners against the ecclesiastical judges: *qe tieles commissions soient repellez et desoremes defenduz, save larticle de Eyre tiele come il doit estre.*

25 *Ed. III* (1351/2) st. 6 c 9: *Item porce qe les Justices le Roi prenent enditementz* (=indictments) *des Ordinaries et de lour Ministres, de extorsions et oppressions et les empeschent saunz ce qils mettent en certein en quoi ou de qi ou en quelle manere ils ount fait extorsion, si voet le Roi qe les Justices le Roi ne empeschent desore les Ordinaries ne lour Ministres par cause de tieux enditementz des generals extorsions ou oppressions, sils ne mettent ou dient en certein en quelle chose et de qui et en quelle manere les ditz Ordinaries ou lours Ministres ount fait extorsions ou oppressions.*

31 *Ed. III* (1357) st. 1 c 4: *Item come les ministres des Evesqes et autres ordinairs de seinte Esglise pregnent du poeple grevouses et outrageouses fynes, pur le proeve des testamentz, et pur les acquitances ent faire; le Roi ad charge Lercevesqes de Canterbirs et les autres Evesqes qils en a mettent amendement; et sils ne facent, acorde est qe le Roi fera enquere par ses Justices des tieux oppressions et extorsions, et de les oier et terminer, sibien a la suyte le Roi come de partie come auncienement ad este use.*

4 *Hen. V* (1415/6) st. 1 c 8 (only valid until the next parliament): Bishops are not to require in testamentary causes more dues than in Edward III's reign; else they must pay to the party concerned the charge threefold.

21 *Hen. VIII* (1529) c 5 *An Acte concerninge Fynes and sommes of Moneye to be taken by the Ministers of Busshops and other Ordinaries of Holye Churche for the Probate of Testaments:* Earlier laws have not availed; a scale of charges is now fixed; all bishops and subordinate officers who exact more forfeit the amount of the overcharge, together with the sum of ten pounds, half to the king, half to the party suing in the ecclesiastical court.

Cf. also Coke, *Institutes* III, c 69.

[58] On the difference which grew to be drawn in the twelfth and thirteenth centuries between *depositio* and *degradatio* cf. Richter, *Kirchenrecht* § 217.

the guilty clerk could still be punished by the secular courts for the offence for which deposition was inflicted. Even Becket admitted that the secular courts were competent, if the clerk committed some *new* crime.[59]

h. Offences in administration of a state office. Numerous examples show that the king called his officials, even if spiritual persons, to account for the discharge of their office, and that secular courts pronounced judgment. No general rule determined the limits of this exception.[60] The attempt of the exchequer (*scaccarium*) to make clerks employed in it amenable only to itself had to be abandoned.[61]

3. *Forfeiture of property; Fines; Amerciaments.*

a. In the agreement of 1176 Henry had only conceded that the *person* of the accused clerk should not, as a rule, in criminal cases be brought before a secular court.[62] Even in the cases in which the *person* of the clerk had to be surrendered to the ecclesiastical court for judgment, his *property* (which in the event of condemnation for treason or felony was forfeited) was, nevertheless, seized for the time being by the state. In connexion herewith the civil courts raised a claim that acquittal by the ecclesiastical court did not bind the state to restore the property seized, but that the state was entitled to decide independently upon its disposal. The authorities of the church pressed to have that claim set aside; but the kings only yielded so far as to consent that in general the property should be delivered to clerks acquitted by the ecclesiastical court. This was, however, as a special act of grace, and the right of deviating from the practice was reserved.[63]

b. Amerciaments.[64] In accordance with Frankish institutions and precedents in the Anglo-Saxon period, under the first Norman kings the whole movable property of the delinquent was, in cases of various kinds of contempt of magisterial orders, declared by the judge to be confiscated (*in misericordia regis*).[65] The exchequer then substituted a fine for confiscation. Soon it be-

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[59] On the discussions in 1163 see above, note 25.

[60] Cf. complaint of clergy and king's answer (*circ.* 1245? Cole, *Documents* 357) art. 16; printed above, note 50.

[61] King's answer to the complaint of the clergy, 1279-85 (*Northern Registers; Rer. Brit. Scr.* No. 61; p. 70) c 10: . . . *rex habet privilegium papae quod sui clerici non cogantur ad residentiam. dum steterint in obsequio suo* (cf. also letter of Edward I, 1st Dec. 1281, to Peckham in *Rer. Brit. Scr.* No. 77, I, 252), *et necesse est quod serviatur rex tam a clericis quam a laicis, et hoc expedit rei-publicae tam cleri quam populi. Vult tamen rex quod clerici sui sint obedientes suis praelatis, sicut caeteri. Et si propter correctiones vocentur coram ordinariis suis, quia forte deliquerint, bene permittit rex quod canonice puniantur.* Similarly 9 *Ed. II* st. 1 (1315/6) *Articuli Cleri* c 8.

[62] *in persona sua* (§ 4, note 54).

[63] Petition of the clergy in 1280 and 1300, with the king's answer at the time (in the petition of 1309, Wilkins, *Concilia* II, 318): *Item bona clerici irretiti de crimine, et coram suo ordinario super hoc se purgantis, non statim, ut convenit, liberantur eidem. Ad istum articulum respondet rex, et promisit, quod ex gratia speciali super hoc ordinaret, ut bona clericorum, qui pro aliquo debito capti et detenti se purgarunt, restituantur eisdem, sed non sine sua litera, in qua contineatur de restitutione hac vice facienda; quia haec restitutio sit de gratia speciali.* Cf. *Mirrour aux Justices* c 3 s 4: . . . *et le Clerke après due purgation reeit* (=let him have back) *toutes ses biens movables et fiefs sans difficulty.*

[64] See thereon especially Gneist, *Verfassungsgesch.* § 11[r] and Madox, *History of the Exchequer* 2nd Ed. London, 1769. I, 526 ff. Reeves, *Hist. of Engl. Law*, Ed. of 1869, I, 280 ff. Brunner, *Deutsche Rechtsgeschichte*, Leipzig, 1892, II, 66. Cf. also *Mirrour aux Justices* c 4 ss 25, 26.

[65] Charter of Henry I in 1100 (printed in *Statutes of the Realm* I, 1 and by Liebermann in *Transactions of the Royal Historical Society*, 1894, p. 40) c 8: *Si quis baronum vel hominum meorum forisfecerit, non dabit vadium in*

came customary, not to wait for the decision of the court; the delinquent threw himself at once on the *misericordia regis*. The fine imposed was called an *amerciament*.

All the clergy were at first subject to this system. By the *Magna Carta* a restriction was made: the measure of the *amerciament* was fixed by sworn jurors, and the clerks were fined *de laico tenemento*, not according to the value of their benefices.[66] As all the higher ecclesiastical dignitaries also had lay holdings, it was still possible by heavy fines to constrain those whose obedience was of most importance to observe the commands of the king and the royal officers or courts; moreover, they were made responsible for the obedience of their subordinates who had no temporal property.[67] Such fines were often inflicted.[68]

In and after the reign of Henry VII further limitations were gradually added. 4 *Hen. VII* (1488/9) c 13 enacted that, in cases of murder, robbery, theft and the like, clerks below the order of subdeacon should in future only be entitled to claim privilege of clergy once; further, that persons of such degree, on their first conviction before a secular court for murder or other felony, should be branded before being surrendered to the ordinary.[69] 7 *Hen. VII* (1491) c 1

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misericordia pecuniae sue, sicut faciebat tempore patris mei vel fratris mei, sed secundum modum forisfacti ita emendabit sicut emendasset retro a tempore patris mei in tempore aliorum antecessorum meorum. Quodsi perfidiae vel sceleris convictus fuerit, sicut iustum fuerit, sic emendet. Dialogus de Scaccario (in Stubbs, *Sel. Charters* 168) II c 16: . . . *Quisquis enim in regiam majestatem deliquisse deprehenditur, uno trium modorum juxta qualitatem delicti sui regi condemnatur: aut enim in universo mobili suo reus judicatur, pro minoribus culpis; aut in omnibus immobilibus, fundis scilicet et redditibus, ut eis exhaeredetur; quod si pro majoribus culpis, aut pro maximis quibuscunque vel enormibus delictis, in vitam suam vel membra. Cum igitur aliquis de mobilibus in beneplacito regis judicatur, lata in eum a judicibus sententia per haec verba, 'iste est in misericordia regis de pecunia sua;' idem est ac si 'de tota' dixissent* . . . Glanvilla, Book IX c 2: . . . *Est autem Misericordia domini Regis qua quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contenemento amittat* . . .

[66] *Magna Carta* of 1215 c 22 (append. VII).

[67] Bracton, Book V tract. 5 c 2 § 5 (VI, 164): . . . *si clericus conveniendus, quia laicum feodum non habet, summonitionem suscipere noluerit, nec plegios invenire, mandabitur episcopo vel ordinario loci quod faciat talem venire coram rege vel justiciariis suis, ad respondendum et satisfaciendum de quocunque placito ad intentionem petentis vel querentis;* . . . See also c 32 §§ 8 ff. (VI, 492 ff); further, the answer of the king to the complaint of the clergy, 1279-85 (*Northern Registers; Rer. Brit. Scr.* No. 61; p. 70) c 11. In the second half of the thirteenth century the bishops frequently complained, but fruitlessly, that they were punished when they did not comply with a mandate of the kind. Cf. also 13 *Ed. I* (1285) *Stat. Westminster II* c 43. The *conservatores privilegiorum* of the hospitallers of St. John and the templars are therein forbidden to have cases brought before them which belong to the king's cognizance. As, however, the *conservatores* are monks, who own nothing and are therefore bold against the king, it is the duty of the prelates, their superiors, to see that they do not encroach; failing in which duty, the prelates are to be mulcted in their temporals.—For instances of the imposition and collection of fines from the baronies of the bishops for non-observance of royal commands see Madox, *l.c.* II, 249.

[68] Gneist, *l.c.*

[69] . . . *be it enacted* . . . , *that every persone not being within orders, whiche onys* (=once) *hath ben admytted to the benefice of his Clergie,*

withdrew the privilege entirely from all clerks, of whatsoever order, guilty of desertion when serving as soldiers at sea or on land beyond the seas. A further act, 12 *Hen. VII* (1496/7) c 7, in connexion with a special occurrence, abolished for the *lower* orders of clerks all benefit of clergy in case of the murder of a master (a form of petty treason).[70] Next came 4 *Hen. VIII* (1512) c 2, which, in murder and robbery under heinous circumstances, likewise cancelled the privilege for those below the order of subdeacon.[71] This last enactment had, it is true, only validity until the meeting of the next parliament. But in the first years of the Reformation these provisions were renewed, with some additions.[72]

The struggle by the clergy to obtain immunity from temporal jurisdiction in *civil* causes took a different course from that, just traced, for privilege in criminal matters. Stephen, in his charter (1136), conceded that the property of all ecclesiastical persons and

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eftsonys (=after soon) *arayned of eny suche offence* ('*murdre rape robbery thefte and all othre myschevous dedys*'), *be not admitted to have the benefice or privilege of his Clergie; And that every suche persone so convicted for murdre, to be marked with a M. upon the brawne of the lefte thumbe, and if he be for eny othre felony, the same persone to be marked with a T. in the same place of the thumbe, and theis markes to be made by the Gaillour openly in the Courte before the Jugge, er that suche persone be delivered to the Ordinary. Provided alwey that if any persone at the second tyme of asking his Clergie, bicause he is within orders, hath not than and there redy his lettres of his orders or a certificat of his Ordinary witnessing the same, that than the Justice afore whom he is so arayned shall gyve him a day by his discrecion to bring in his seid lettres or certificat; And if he fayle and bring not in at such day his seid lettres nor certificat, than the same persone to lose the benefice of his Clergie as he shall doo that is without orders.* By orders are to be understood *ordines sacri* or *majores* (priest, deacon and subdeacon; cf. § 22, note 2). The discrimination in respect of privilege of clergy between clerks of the higher and those of the lower orders appears for the first time, it would seem, in the charter of Edward IV in 1462 (appendix IX), which makes regulations only for those in higher orders. Similar distinctions appear also to have been mooted as early as the negotiations of 1163 (cf. above, note 25).—The pope, by letter of 7th May, 1495 (Spelman, *Concilia* II, 722), called on the king to annul this act.

[70] s 1. One Grame has, in the hope of *benefit of clergy*, murdered his master, Richard Tracy, *Gentilman.* He is, therefore, *atteynted as felon that hath offendid in pety treason.*

s 2: *Also be it ordeyned . . . that if any laie persone hereaftir purpensidly murder their Lord Maister or Sovereign immediate, that they hereaftir be not admytted to their Clergie: and aftir conviccion or atteynder of any suche persone, soe hereaftir offending, had aftir the Course of the Lawe, that the same persone be putte in execucion as though he were noe Clerk.*

[71] 4 *Hen. VIII* (1512) c 2 *Pro murdris et felonibus.*

s 1: *. . . all . . . persons hereafter commyttyng murder or felonye in eny Church Chapell or halowed place or of and apon malice prepensed robbe or murder any person in his howse the owner or dweller of the howse his Wyff Childe or servaunt then beyng theryn and put in fere or drede by the same, That such . . . persons so offending be not from hensforth admytted to . . . their clergy, suche as ben within holy orders only excepte.*

s 2: *. . . And this acte to endure to the nexte parliament.*

[72] 23 *Hen. VIII* (1531/2) c 1. Cf. below, § 61, note 5.

clerks should be under ecclesiastical jurisdiction.[73] This was going far towards acknowledging special amenability of the clergy in civil causes. But in contrast therewith, by the constitutions of Clarendon (1164) suits for debt are referred unconditionally to the king's court,[74] and in respect of two other kinds (suits touching patronage and right of presentation, and suits touching a lay holding) stress is laid on the fact that cognizance belongs to the secular court, even if the defendant is a clerk.[75]

In the thirteenth and fourteenth centuries the clergy frequently renewed their claim to a recognition of their right to answer to civil suits in ecclesiastical courts.[76] But they did not make good their claim; on the contrary, the secular courts intervened with prohibitions when attempt was made to try such actions in an ecclesiastical court.[77]

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[73] *Ecclesiasticarum personarum et omnium clericorum et rerum eorum justitiam et potestatem et distributionem bonorum ecclesiasticorum in manu episcoporum esse perhibeo et confirmo.* See full text of the charter in appendix II.

[74] c 15 (appendix IV).—For an instance of an action at law touching a debt between two clerks before an ecclesiastical court see letter of Foliot, bishop of London, to archbishop Becket, 1163. *Materials for Hist. of Becket* (*Rer. Brit. Scr.* No. 67) V, 65.

[75] cc 1, 9 (append. IV).

[76] Petition of the English clergy in 1237 (*Ann. Burton; Rer. Brit. Scr.* No. 36; *Annales Monastici* I, 254): . . . *Item petunt, quod clerici non conveniantur in actione personali quae non sit super re immobili, coram judice saeculari, sed coram judice ecclesiastico; et quod prohibitio regis non currat quo minus hoc fieri non possit.*

Complaint of the clergy at the council of *London*, 1257 (Wilkins, *Concilia* I, 726) c 21: *Item per eandem districtionem attachiantur et coguntur clerici in actionibus personalibus, et in his, quae ex contractibus oriuntur in foro seculari; et etiam delictis respondere querelantibus.*

Council of *Merton*, 1258 (Wilkins, *Conc.* I, 736, after *Annal. Burton*): . . . *saepe contingit, archiepiscopos, episcopos, et alios praelatos inferiores per literas domini regis ad seculare judicium evocari, ut ibi respondeant super his, quae mere ad ipsorum officia, et forum ecclesiasticum pertinere noscuntur; ut . . . si inter clericos suos cognoscant, vel inter laicos conquerentes, et clericos defendentes, in personalibus actionibus super contractibus vel debitis; . . .*

Const. of archbishop Boniface at the council of *Lambeth*, 1261 (Wilkins, *Concilia* I, 746) c 1: . . . *Item, si vocetur praelatus ad judicium seculare, pro eo quod cognovit inter clericos suos, vel inter laicos conquerentes, et clericos defendentes in personalibus actionibus super contractibus aut delictis, vel quasi; . . . pro talibus, inquam, et his similibus, praelati ad judicium seculare vocati, ut ibidem pro his judicium subeant, nullatenus venire praesumant . . .*

In regard to Wales see *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77), I, 249–251.

Diocesan council of *Exeter*, 1287 (Wilkins, *Concilia* II, 129) c 30: . . . *inhibemus ne clericus clericum super re spirituali, aut quacunque actione personali . . . trahat in causam coram judice seculari . . . Si quis vero laicus clericum cujuscunque gradus duxerit esse pulsandum, coram ecclesiastico judice eas proponat, quas se habere existimat actiones.*

[77] Complaint of clergy and king's answer (*circ.* 1245? Cole, *Documents* 354 ff.): art. 5: *Item si inter Clericos vertantur questiones coram suo Episcopo, inhibetur ne in dictis questionibus procedatur. Responsio. Si Clerici coram*

b. Competence in respect of causes.

The competence of ecclesiastical courts in respect of causes, in the sense of exclusive competence, rested on the above mentioned ordinance of William I, whereby matters which belonged to the guidance of souls (*quae ad regimen animarum pertinent*) were referred to the sole cognizance of such courts.

In virtue of this general rule certain civil causes passed permanently to the ecclesiastical courts: those touching testaments, inheritance or marriage, disputes in regard to church dues (tithes, church rates etc.), matters relating to church buildings or churchyards and other less important cases. But even in these departments the temporal power intervened in various ways. Particularly useful as a basis for such intervention was the practice of the secular courts to draw before them all suits pending before an ecclesiastical court in so far as there was a disputable issue only to be decided by the law of the land.[78] Attempts by Henry III and Edward I to restrict the competence of ecclesiastical courts either generally, or in civil causes to questions of marriage and testamentary law, produced no permanent effect.[79] On the other hand, the church for

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suo Episcopo de personali delicto aut mere spiritualibus inter se habuerint questiones, Rex inde se non intromittit. Si autem de contractibus aut catallis quorum cognitio ad Regem pertinet, arguere solet Princeps semper tam contendentes quam cognoscentes. art. 6: *Item si laicus convenit Clericum coram Episcopo suo similiter inhibetur, cum inter istos cognitio adeo ad judicium ecclesiasticum pertineat quod eciam Clerici voluntarie renunciare non possunt, foro ecclesiastico. Responsio. Si laicus conveniat Clericum coram suo Episcopo, tunc eciam racione contractuum et catallorum cognicio pertinet ad Regem, si inde sit questio, intromittit se Rex ut prius.* art. 17: *Item si Clericus laicum convenire velit vel inter Clericos seu inter laicum et clericum de feodo laicali agatur, scire volumus quid de consuetudine super hiis observetur. Responsio. Omnes questiones inter quascumque personas de feodo laicali, ad Regis pertinent cognicionem.*

Complaint of clergy and king's answer, 1279–85 (*Northern Registers; Rer. Brit. Scr.* No. 61; p. 70) c 19: *Item coguntur clerici in actionibus personalibus quae ex delictis vel contractibus nascuntur in foro saeculari respondere.—Ad nonum et decimum nondum respondetur, sed rex deliberabit.*

Complaint of clergy in 1280 and 1300 and king's answer at the time (in the petition of 1309, Wilkins, *Concilia* II, 319): *Item si clericus coram ecclesiastico judice in judicio recognoscat se debere alteri clerico debitum quodcunque, et per ecclesiasticum judicem condemnetur ad solvendum debitum hujusmodi, prout hactenus fieri consuevit; judex tamen ipse, quo minus id exequi valeat, per prohibitionem regiam impeditur. Ad istum articulum respondet rex: Quod sive clericus agat contra clericum, sive contra laicum, sive laicus contra clericum in hujusmodi actionibus, scilicet in foro regio, respondere debet, et taliter usi sunt justitiarii regis a tempore cujus contrarii memoria non existat.*

[78] Sometimes, however, this rule was deviated from. Cf. *e.g.* the ruling (cited in Godolphin 157) 11 *Jac.*, May *v.* Gilbert: *The Court* (from which prohibition was sought) *answered: As for the Title* (alleged was: *Prescription*) *we are not here to meddle with it, this* (the suit in the ecclesiastical court) *being for a Seat in the Church.*

[79] The earliest known mention of a prohibition in case of *debita et catalla* '*nisi sint de testamento vel matrimonio*' is found in a collection of *Brevia de cursu* dating probably from about 1227, MS. Cambridge Ti. VI, 13, No. 30 of

long claimed other fields, the ecclesiastical courts trying disputes on contracts ratified by vow or oath and disputes touching right of

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the collection (Maitland, *The History of the Register of Original Writs* in *Harvard Law Review* III, 114, October 1889).—Cf. also the form of prohibition in Bracton, Book V, tract. 5 c 3 § 2 (VI, 170): . . . *quia placita de laico feodo et de debitis et catallis quae non sunt de testamento et matrimonio spectant ad coronam et dignitatem nostram.*

Complaint of the clergy, 1237 (*Ann. de Burton; Rer. Brit. Scr.* No. 36; *Annales Monastici* I, 256): *Item, laici faciunt clamare Londoniae voce praeconia, ne quis tractet causam in foro ecclesiae sive de perjurio, sive de fide laesa, de usura vel simonia, vel defamatione, nisi tantum super testamento vel matrimonio. et prosequentes hujusmodi causas incarcerant.*

Matthaeus Parisiensis, *Chronica Majora* (*Rer. Brit. Scr.* No. 57) IV, 579, year 1246: . . . *cum episcopus Lincolniensis supra quam deceret vel expediret, in subjectos suos . . . desaeviret; ita scilicet ut faceret inquisitiones districtas per archidiaconos et decanos suos in episcopatu suo de continentia et moribus tam nobilium quam ignobilium, . . . quod nunquam fieri consueverat; dominus rex . . . consilio curiae suae scripsit vicecomiti Hertfordiae in haec verba: Henricus Dei gratia rex Angliae, etc. Praecipimus tibi, quod sicut teipsum et omnia tua diligis, non permittas quod aliqui laici de balliva tua ad voluntatem episcopi Lincolniensis archidiaconorum vel officialium seu decanorum ruralium in aliquo loco conveniant de caetero, ad recognitiones per sacramentum eorum vel attestationes aliquas faciendas, nisi in causis matrimonialibus vel testamentariis.*

According to Matthaeus Parisiensis, *l.c.* IV, 614 the king in 1247 issued a mandate on the following points: *Lites de fidei laesione et perjurio prohibentur a rege, quando super his conveniuntur laici coram judice ecclesiastico. Prohibetur ecclesiasticus judex tractare omnes causas contra laicos, nisi sint de matrimonio vel testamento. Item, de novo praescribit rex certam formam episcopis de bastardia; utrum scilicet ante matrimonium contractum vel post nati sint. Prohibentur clerici per breve regis instituere actiones suas coram judice ecclesiastico super decimis; et appellatur illud breve, 'Indicavit.' De sacramentis quae exiguntur a clericis coram justitiariis regis praestandis, quia dicuntur processisse in causis contra prohibitionem regiam, cum jurare non teneantur clerici, nisi coram judice ecclesiastico, maxime in causis spiritualibus. Item, de clericis quos ministri regis capiunt, propter famam quae a laicis eis imponitur.*

Prohibitio, time unknown (printed in *Stat. of Realm* I, 209 under the name *Prohibitio formata de Statuto Articuli Cleri;* Coke, *Inst.* II, 600 supposes, without giving reasons, that it was issued at the beginning of Edward I's reign): *Edwardus etc. . . . Cum cognitiones placitorum super feodalibus et libertatibus feodalium, districtionibus, officiis ministrorum, executionibus judiciorum corone nostre, transgressionibus contra pacem nostram factis, felonum negationibus ,consuetudinibus secularibus, attachiamentis vi laica, malefactoribus rectatis, roberiis, arestacionibus, maneriis, advocationibus ecclesiarum, conventionibus, sufficientibus assisis, juratis, recognitionibus laicum feodum contingentibus, et rebus aliis, ac causis pecuniarum et de aliis catallis et debitis, que non de testamento vel matrimonio, ad coronam et dignitatem nostram pertineant, eisdem regno de consuetudine ejusdem regni approbata et hactenus observata*, but as ecclesiastical courts in Norfolk and Suffolk draw such causes to themselves, this is forbidden. *Et quod non permittant [vicecomites] quod aliqui laici in balliva sua in aliquibus locis conveniant ad aliquas recognitiones per sacramenta sua faciendas, nisi in causis matrimonialibus et testamentariis . . .*

Articuli episcoporum 1285, c 10: *Quod laici litigantes coram judicibus ecclesiasticis, propter hoc non graventur, donec regia prohibitio sit porrecta, et sciatur. an hujusmodi causa ad forum ecclesiasticum debeat pertinere. Responsio Regis: Curia intendit, quod praelati bene sciant cognoscere,*

patronage. But in all these points the claim, in spite of continued efforts, was not made good.[80]

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quae placita sint de testamento, et quae de matrimonio, et super aliis non cognoscant. (Wilkins, *Conc.* II, 115.)

Prohibition of Edward II to the archbishop of Canterbury, 14th March, 1319 (Rymer, *Foedera* 4th Ed. II, 388): *Cum placita de catallis et debitis in regno nostro, que non sunt de testamento vel matrimonio, ad coronam et dignitatem nostram specialiter pertineant . . .*—(Cf. instruction of Edward II to the archbishop of York, 16th Feb. 1318, in *Rer. Brit. Scr.* No. 61, p 271.)

In the expression *quae non sunt de testamento vel matrimonio* the opposition is to ordinary actions for debt; there is not apparently any intention of denying the competence of the ecclesiastical courts in other departments where it was admitted, *e.g.* in suits for tithes.

[80] From the law-books compare especially the following passages:—

Glanvilla (*circ.* 1180–90) Book I c 3 in reference to civil causes, *de Recto: In Curia domini Regis* (in opposition to county court) *habent ista tractari et terminari: . . . placitum de Advocationibus Ecclesiarum, . . . placitum de Dotibus unde mulieres ipsae nil penitus perceperunt, . . . placitum de Debitis laicorum.* Book XIII c 1: *Nunc vero ea quae super Seisinis solummodo usitata sunt, restant prosequenda: quae quia ex beneficio constitutionis regni, quae Assisa nominatur, in majori parte transigi solent per Recognitionem. de diversis Recognitionibus restat tractandum.* c 2: *Est autem quaedam Recognitio, quae vocatur de morte antecessoris* (it rests on the assize of *Northampton*, 1176, c 4); *quaedam autem est de ultimis praesentationibus Personarum in Ecclesiis* (it rests probably on a lost statute; cf. also const. of *Clarendon*, 1164, c 1); *quaedam, utrum aliquod tenementum sit Feodum ecclesiasticum vel laicum Feodum* (rests on const. of *Clarendon*, 1164, c 9): . . . *Quaedam autem Recognitio est quae dicitur de Nova Disseisina* (rests on assize of *Northampton*, 1176, c 5) . . . Cf. here Bracton (*Rer. Brit. Scr.* No. 70) II, 162.

Bracton (*circ.* 1230–57) Book V, tract. 5 c 10 § 1 (VI, 206): *Quando et in quibus locum non habeat prohibitio dicendum. Et sciendum quod locum non habebit prohibitio in curia Christianitatis de aliquo spirituali vel spiritualitati annexo, sive agatur inter clericos sive inter clericum et laicum, vel ubi agatur ex causa testamentaria vel matrimoniali, vel de aliquo de quo sit poenitentia injungenda pro peccato. Item . . . si . . . agatur de aliquo tenemento quod sit sacrum, et per pontifices Deo dedicatum, sicut sunt abbatiae, prioratus, et monasteria, et horum caemiteria. Item quasi sacra, quia spiritualitati annexa, sicut sunt terrae datae ecclesiis tempore dedicationis, . . . ,quod quidem non est intelligendum de libera eleemosyna quamvis sit pura. Nota quod non jacet prohibitio in dote ecclesiae, jacet tamen in libera et pura eleemosyna . . . Item nec locum habebit prohibitio si in foro ecclesiastico agatur, et hoc ratione personarum, sicut de catallis clericorum eis violenter ablatis, . . . Item . . . non . . . si de decimis agatur . . . Sed contra . . . , si decimae petantur, vel earum precium si vendantur ex venditione . . . Item locum non habebit prohibitio . . . de promissionibus factis de pecunia danda ob causam matrimonii in initio contractus nomine maritagii. Secus autem si tenementum promittatur . . .* See also c 16 § 1 (VI, 252).

Fleta (*circ.* 1290) Book VI c 14 § 3: . . . *Decimae autem in quantum decimae et res testatae in possessione testatoris tempore obitus sui existentes et catalla data ob causam matrimonii et plura alia in Foro Ecclesiastico debent intentari; . . .* § 5: *Nullum enim privilegium Jurisdictionem Regiam in hac parte mutare poterit, similiter nec fidei interpositio neque Sacramentum praestitum, neque partium spontanea renunciatio; Et hoc idem dici poterit de catallis et debitis quae non sunt de testamento vel matrimonio et eorum sequela. Et eodem modo de injuriis personalibus tam in actionibus criminalibus quam civilibus, dum tamen civiliter agatur; et si criminaliter agatur versus clericum quamvis clericus respondere noluerit in*

Of causal competence in *civil* causes the following particulars are to be noted:[81]—

1. *Matrimonial causes.*

As early as the Norman conquest it was the prevailing doctrine in the church that marriage is a sacrament proper.[82] Thus there could be no hesitation about regarding matrimonial causes as matters which belonged to the guidance of souls, and leaving them, in pursuance of the ordinance of William I, to the ecclesiastical courts.[83] The principle was not subsequently challenged in the period we are now considering; on the contrary it was repeatedly confirmed.[84]

2. *Questions of legitimation and bastardy.*

Probably from the time when William's ordinance was issued, it was recognized that the ecclesiastical court, as a corollary to its competence in

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Foro seculari, Judex tamen Ecclesiasticus cognitionem habere non poterit nec Regiam auferre jurisdictionem, licet habere debeat Judicii executionem. § 6: *In causa enim sanguinis non poterit Ecclesiasticus Judex cognoscere neque judicare neque irregularitatem committere, et quamvis neminem valeat morti condempnare, degradare tamen poterit crimine convictos vel perpetua carceris inclusione custodire.* § 7: *In causis vero testamentariis vel matrimonialibus non habebit locum Regio Prohibitio, et eodem modo in lite suscepta de rebus defuncti specialiter non dispositis, quamvis dispositio earum arbitrio relinquatur executorum.*

Britton (*circ.* 1291–2) Book I c 22 (*Soit enquis des viscountes*) § 9: *Et queus ount suffert pleder en Court Cristiene autres pletz qe de testament ou de matrimonie, ou de pure espiritualté sauntz dener prendre de lay homme, ou suffert lay homme jurer devaunt ordinarie.* Book I c 5 § 4: *Car nous volums qe Sainte Eglise eyt ses fraunchises desblemies, issi qe ele eyt conisaunce a juger de pure espiritualté, de testament et de matrimoine, de bastardie et de bigamie, et en felonies de ses clercs, et en correcciouns des pecchez; sauve qe les ordinaries ne prengent nul dener, ne la value, des lays, ne de nul dener ne facent jugement for qe de testament et de matrimoine et de pure espiritualté et de amendement de cymiteres et de defautes des eglises et de mortuaries et de dyme, sauntz prejudice de nous.*

[81] Cf. Reeves, *Hist. of Engl. Law* c 26, Ed. 1869, III, 70 ff.; Stubbs, Historical appendix I to the *Report of the Ecclesiastical Courts Commission*, 1883 (*Parliamentary Reports*, vol. XXIV); on matrimonial causes, disputes as to legitimacy and dower, Friedberg, *Das Recht der Eheschliessung*, Leipzig, 1865, pp. 49 ff.

[82] Cf. Richter, *Lehrbuch d. Kirchenrechts* § 267. notes 4. 5; but he argues that the development in this direction had not in the twelfth and thirteenth centuries reached its final stage.

[83] Cf. letter of Lanfranc to bishop Stigand of Chichester (ed. Giles, p. 51; according to Jaffé, 2nd Ed. No. 5150 from the years 1075–80): *Misit mihi litteras Papa, in quibus praecepit, ut causam istius mulieris, quam adversus eam habetis, diligenter audiam; et interim quietam et absolutam esse praecipiam; propterea mando vobis, ut, pace vestra, cum viro suo maneat, quoadusque in unum conveniamus et ipsam causam cum consilio episcoporum inter nos conferamus; et adjuvante divina gratia salubri fine definiamus.*

[84] For the time of Henry III and Edward I cf. above, notes 79, 80. On the competence of the ecclesiastical court in the restitution of nuptial relations see Bracton, Book IV, tract. 1 c 24 § 2 (III, 328): *recurrendum . . . ad forum ecclesiasticum, ut compellatur sequi virum suum*, and Britton, Book V c 10 § 6.

matrimonial causes, had cognizance in questions of the legitimacy of birth.[85] Glanvilla takes this for granted;[86] and at a later period it was also undisputed law.[87] But the secular courts intervened with prohibitions when, in cases in which (as to be mentioned below) the law of the land deviated from ecclesiastical law, a bastardy action, without being referred by the secular court, was brought first in the ecclesiastical court, in order that the ecclesiastical judgment might subsequently be made use of in a claim to succession brought in a secular court.[88]

If the question of bastardy arose as a plea in proceedings before a secular court, *e.g.* in a disputed succession, the rule prevailed that the preliminary question of bastardy or legitimacy should be referred for decision to the ecclesiastical court.[89] In the case, however, to be mentioned presently, of

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[85] The letters of John of Salisbury (Migne, *Patrologiae Cursus*, vol. 199) show that before the time of Henry II and at the beginning of his reign in questions of legitimacy the ecclesiastical courts were called on to decide, and that there were appeals to the pope.

[86] Glanvilla, *Tractatus de Legibus* (*circ.* 1180–90) Book VII:—

c 13. *Haeres autem legitimus nullus Bastardus, nec aliquis qui ex legitimo matrimonio non est procreatus, esse potest. Verum si quis versus aliquem haereditatem aliquam tanquam haeres petat, et alius ei objiciat quod haeres inde esse non potest, eo quod ex legitimo matrimonio non sit natus; tunc quidem placitum illud in Curia domini Regis remanebit, et mandabitur Archiepiscopo vel Episcopo loci quod de matrimonio ipso cognoscat; et quod inde judicaverit, id domino Regi vel ejus Justiciis scire faciat, et per hoc breve:*

c 14. *Rex Archiepiscopo salutem. Veniens coram me W. in Curia mea, petiit versus R. fratrem suum quartam partem Feodi unius militis in illa villa, sicut jus suum, et in quo idem R. jus non habet, ut W. dicit, eo quod ipse Bastardus sit, natus ante matrimonium matris ipsorum. Et quoniam ad Curiam meam non spectat agnoscere de Bastardia, eos ad vos mitto mandans ut in Curia Christianitatis inde faciatis quod ad vos spectat. Et cum loquela illa debitum coram vobis finem sortita fuerit, mihi litteris vestris significetis, quid inde coram vobis actum fuerit. Teste etc.*

c 15: according to ecclesiastical law the consequences of illegitimacy are to be regarded as annulled as soon as the parents subsequently marry; but not according to English law. But if dispute arises whether birth was before or after marriage, this preliminary question is referred for decision to the ecclesiastical court.

[87] 1 *Ed. VI* (1547) c 2 s 2 mentions causes of bastardy as a branch of ecclesiastical jurisdiction.

[88] Formularies in Bracton, Book V, tract. 5 c 6 (*Rer. Brit. Scr.* No. 70; VI, 188 ff.).

[89] An instance of such procedure (1158–63) will be found in Bigelow, *Placita*, 311 after Palgrave, *Commonwealth* II, 75.—Glanvilla, Book VII cc 13–15 (above, note 86). Full accounts in Bracton, Book V, tract. 5 c 19 (VII, 284 ff.) and in *Fleta* (*circ.* 1290), Book VI c 16. From the latter source the following passage especially is relevant here: § 3. *Causae quidem sunt plures, ut si pater petentis nunquam desponsavit matrem ejus, vel si matrimonium inter patrem et matrem ejus contractum fuit illegitimum, quia aliam uxorem habuit legitimam tempore contractus secundae superstitem; Et in istis duobus casibus non habet Judex secularis cognitionem, quia ad ipsum non pertinet discussio utrum fuit ibi matrimonium vel non, nec quae mulier fuit uxor sua legitima et quae non.* § 4. *Sunt etiam aliae causae bastardiae quarum cognitio ad Curiam Christianitatis non est demandanda, ut si tenens excipiendo dicat petentem nihil juris habere quia bastardus pro eo quod natus fuit antequam pater suus matrem suam desponsavit, vel si dicat quod bastardus sit quia ab alio quam a viro matris suae progenitus; . . .*—Cf. also Rad. de Hengham, *Summa Parva* c 8: *. . . si quis clamat liberum tenementum . . . et recognoscatur per assisam quod iure successionis intravit, et pendet inter eos*

children born before marriage, the ecclesiastical courts raised difficulties. In reaction thereto the secular courts, from the beginning of the thirteenth century onward, endeavoured to draw to themselves decision upon pleas of bastardy in general. In particular they laid stress on the point that they were only bound to leave decision to the ecclesiastical court when the question of bastardy could be solved only by decision as to the existence or validity of a marriage. The following cases may be noted here:—

a.[90] According to older English law, perhaps the children born before marriage were regarded as legitimate if recognized at the solemnization of the marriage of the parents.[91] The great justiciar Richard de Luci (1154–79), however, following the lines of feudal law, seems to have overruled the ancient practice, deciding that the formal recognition did not make bastards legitimate.[92] From this time the view taken by de Luci was taken to be the law of the land (so in Glanvilla), and was maintained, although the church, for her part, acknowledged legitimation by subsequent marriage. Thus, on this question, at latest from the second half of the twelfth century, the law of the land was at variance with the canon law. When the question arose in practice, the secular court could not acknowledge the judgment of the ecclesiastical. Thus in Glanvilla's time the only point referred in such a case to the latter was the question of fact, whether the birth took place before or after marriage.[93] In the thirteenth century the bishops endeavoured to bring about a change in the law of the land so as to accommodate it to ecclesiastical law. With this object in view they refused to pronounce on the question of fact. The secular courts thereupon caused the inquiry to be made under their own guidance by sworn jurors.[94] In 1234, king, bishops and temporal magnates arrived at a settlement to the effect that the issue whether birth was before or after marriage should be referred to the bishops.[95] At the national council of Merton (January, 1236) the bishops once more attempted to bring the barons to recognize legitimation by subsequent marriage, but without success.[96] As they thereupon declined to

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placitum in Curia Christianitatis de Bastardia; quamdiu fuerit placitum in Curia Christianitatis, remanebit placitum in Curia Regis in suspenso; . . . 18 *Ed. III* (1344) st. 3 c 2: . . . *la bygamye* . . . *soit mandez a la Court Cristiene, come ad este fait en cas de bastardie* . . .—9 *Hen. VI* (1430/1) c 11 directs proclamation before a writ is awarded to the ordinary to certify bastardy.

[90] Cf. on this point Twiss, Introduction pp. xvii ff. to Bracton (*Rer. Brit. Scr.* No. 70) vol. II, and Introduction pp. xxxii ff. to Bracton, vol. VI; Güterbock, *Bracton und sein Verhältnis zum Röm. Recht* pp. 97 ff., Maitland, *Bracton's Note Book* I, 104 ff.

[91] Letter of bishop Grosseteste to the justiciar William de Raleigh (*Rer. Brit. Scr.* No. 25) p. 89: . . . *ut seniorum relatione didici, consuetudo etiam in hoc regno antiquitus obtenta et approbata, tales legitimos habuit et haeredes; unde in signum legitimationis, nati ante matrimonium consueverunt poni sub pallio super parentes eorum extento in matrimonii solennizatione.*

[92] Answer of Raleigh to Grosseteste, mentioned in a second letter of Grosseteste to Raleigh, *l.c.* p. 96: *Praeterea ad confirmandam hanc legem quod bastardus sub pallio supra parentes nubentes extento positus inde surgit bastardus, induxistis testimonium Ricardi de Luci.*

[93] Glanvilla, Book VII c 15 (above, note 86).

[94] Bracton, Book V, tract. 5 c 19 § 2 (II, 292) mentions a case of the kind in 11 *Hen. III* (1226/7).

[95] The deed of agreement is in *Rer. Brit. Scr.* No. 70, appendix to Bracton II, 606 and VI, 510. According to Bracton *l.c.* VI, 290, the agreement was two years later.

[96] 20 *Hen. III* (1235/6) *Provisiones de Merton* c 8: *Ad breve Regium de Bastardia utrum aliquis natus ante matrimonium habere poterit hereditatem, sicut ille qui natus est post, Responderunt omnes Episcopi quod nolunt nec possunt ad istud respondere, quia hoc esset contra communem formam ecclesie. Ac rogaverunt omnes Episcopi Magnates ut consentirent quod nati ante matri-*

adjudicate on the question of fact, the secular courts for some time abstained entirely from referring it to the ecclesiastical tribunals.[96a] Nevertheless, we find presently (from 1247 onwards?) that the rule became to observe the understanding reached in 1234; the secular courts, however, persisted in their view that the ecclesiastical were not *exclusively* competent to determine the matter. Hence they struck out of the form of reference the pertinent clause,[97] usual in other cases; and occasionally, particularly if the bishop did not confine himself solely to answering the question of fact, they caused inquisition to be made independently by sworn jurors.[98] In 1247 the king prescribed anew that the bishops should answer the question of fact.[99] From the end of the thirteenth century reference to the ecclesiastical courts in the case under discussion wholly ceased.[100]

b. In case a plea of bastardy was raised on the ground that the child was begotten by some other than the husband of the mother, there was no reference to the ecclesiastical courts, as neither the fact nor validity of a marriage was in question.[101]

c. If a plea was raised as to the legitimacy of an ancestor, not of a party to the suit, the disputed fact was determined by a jury.[102]

d. An attempt was made at the beginning of the fourteenth century to enable the party concerned always to avoid a reference to the ecclesiastical court, the secular judges ruling that such reference need not be made if the word 'bastard' was evaded in drawing the plea.[103]

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monium essent legitimi, sicut illi qui nati sunt post matrimonium quantum ad successionem hereditariam, quia ecclesia tales habet pro legitimis; et omnes Comites et Barones una voce responderunt quod nolunt leges Anglie mutare que usitate sunt et approbate.

[96a] Letter of Henry III, May 9th, 1236, to the archbishop of Dublin and the justiciar of Ireland (*claus.* 20 *Hen. III, m.* 13d., printed in Blackstone, *The Great Charter*, Oxford, 1759, Introduction, p. lvii, note *c*): . . . *noluerunt ad hoc respondere et reliquerunt nobis et curie nostre hoc inquirendum et terminandum.*

[97] *quoniam hujusmodi inquisitio pertinet ad forum ecclesiasticum.* Formulary in Bracton, Book V, tract. 5 c 19 § 8 (VI, 308). Compare also the formulary for putting such a question to the bishop, which is to be found in the last part of a collection of the *Brevia de cursu* [MS. Cambridge Kk V. 33], which probably originates from the years 1237–59 and the last part of which contains the *Brevia*, which had then only just been newly added (Maitland, *The History of the Register of Original Writs* in *Harvard Law Review* III, 175, November, 1889).

[98] Bracton, Book V, tract. 5 c 19 § 2 (VI, 294); cf. also Book IV, tract. 3 c 19 § 1 (IV, 326).

[99] Matth. Paris, *Chron. Maj.* IV, 614 (above, note 79).

[100] *Fleta* (*circ.* 1290) Book VI c 16 § 4 (above, note 89). *Year-Books* (*Rer. Brit. Scr.* No. 31) 11–12 *Ed. III*, pp. 231–35, 351–53 (year 1337 or 1338).

[101] Bracton, Book V, tract. 5 c 19 § 2 (VI, 296). *Fleta*, Book VI c 16 § 4 (above, note 89).

[102] Bracton, Book IV, tract. 1 c 23 § 5 (III, 308), Book V, tract. 5 c 19 § 17 (VI, 320). *Fleta*, Book VI c 16 §§ 14, 15. Britton, Book III c 16 § 3.

[103] Petition of the clergy, 1309 (Wilkins, *Concilia* II, 321): *Item quod cognitio bastardiae, seu illegitimitatis ad forum ecclesiasticum pertineat, ac quidam justitiarii de novo, si proponatur exceptio coram eis sub hac forma, 'Non est legitimus' de ea de facto cognoscunt; sed si sub hac forma verborum proponatur exceptio, 'Est bastardus,' tunc supersedent, quousque per ecclesiam super hoc fuerit cognitum, mirandam novitatem adinvenientes contra ecclesiasticam libertatem; petitur, quod, non obstante variatione verborum, a cognitione causarum hujusmodi desistatur.*—In earlier times objection of bastardy without the use of the word *bastardus* seems to have been invalid. Cf. *e.g. Fleta*, Book VI c 16 § 5.

3. *Maritagium* and *dos*.

According to Glanvilla an action to recover immovables promised as a wife's portion (*maritagium*) could, if against the donor or his heirs, be brought, according to the plaintiff's election, either in the ecclesiastical or the secular court; if the action was against some other person, only the secular court was competent.[104] In the thirteenth century the competence of the ecclesiastical court seems to have been recognized as exclusive in so far as movables given or promised as a wife's portion were concerned, the secular courts being exclusively competent in respect of immovables.[105] The usage of the courts in the fourteenth century led to an extension of the claim to competence for the secular courts in matters of *maritagium*.[106]

At latest in the eleventh century it was customary for the husband, at the time of the espousals before the door of the church, to give his wife certain property (land or movables, at most one-third of his property) in case he should die before her. The property so settled had to be demanded after the husband's death in the secular court; only a plea raised that the plaintiff was not the lawful wife of the deceased was referred to the ecclesiastical court.[107]

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[104] Glanvilla, Book VII c 18: . . . *Cum quis autem terram aliquam de maritagio uxoris suae petit, vel mulier ipsa vel ejus haeres, tunc distinguitur utrum terra illa petatur versus donatorem vel ejus haeredem, vel versus extraneum: quod si versus donatorem vel ejus haeredem petatur, tunc in electione petentis esse poterit, utrum inde placitare voluerit in Curia Christianitatis an in Curia seculari. Spectat enim ad Judicem ecclesiasticum placitum de maritagiis tractare, si pars petentis hoc elegerit, propter mutuam affidationem quae fieri solet quando aliquis promittit se ducturum in uxorem aliquam mulierem, et ei maritagium promittitur ex parte mulieris; nec per Curiam domini Regis defendetur placitum illud in Curia Christianitatis, licet de laico Feodo sit, si constiterit quod ad maritagium petatur. Si vero versus extraneum petatur, tunc in laica Curia terminabitur placitum illud eodem modo et ordine quo de aliis laicis Feodis placitari solet; . . .*—Cf. *Rot.* 23 *Hen. II* (cited in Bigelow, *l.c.* 274): *De placitis et conventionibus curiae: Willelmus filius Ulgerii debet C. s., pro habenda recognitione de maritagio matris suae, unde dissaisita fuit tempore werrae sine judicio.*

[105] See the passages from Bracton and *Fleta* quoted above in note 80.

[106] Thus competence was claimed if the *maritagium* was promised in writing, or if the promise was conditional: "in case he should marry the daughter." 45 *Ed. III*, 24 or 22 *Ass.* 70, cited in Reeves, *Hist. of Engl. Law* c 25, 3rd Ed. IV, 65.

[107] Glanvilla, Book VI, *De Dotibus*, c 1: *Dos Duobus modis dicitur. Dos enim dicitur vulgariter, id quod aliquis liber homo dat sponsae suae ad Ostium Ecclesiae* (on the fact that non-public bestowal of the *dos* was invalid, see Bracton II, 50, IV, 496, 508) *tempore desponsationis suae. Tenetur autem unusquisque, tam jure ecclesiastico quam jure seculari, sponsam suam dotare tempore desponsationis suae. Cum quis autem sponsam suam dotat, aut nominat Dotem aut non. Si non nominaverit, tertia pars totius tenementi liberi sui intelligitur Dos ejus; et appellatur rationabilis Dos cujuslibet mulieris tertia pars totius liberi tenementi viri sui, quod habuit tempore desponsationis; ita quod inde fuerit seisitus in Dominico.* [On the law in this respect in the 12th and 13th cents. cf. Twiss, Introduction to Bracton, vol. IV, pp. liii ff. and Nichols, Introduction, p. xli to Britton.] *Si vero Dotem nominat, et plus tertia parte, Dos ipsa in tanta quantitate stare non poterit: amensurabitur enim usque ad tertiam partem; quia minus tertia parte, scilicet tenementi sui, potest quis dare in Dotem, plus autem non.* In c 2 the possibility of giving a *dos* in movables, or even in money, is mentioned. For actions of wife and heirs against each other after the husband's death, Glanvilla names only the civil court as competent. Cf. also Bracton, Book IV, tract. 6 c 18 § 1: *Facta autem dotis constitutione et*

The attempt made by the authorities of the church in the thirteenth century to exclude the competence of the secular courts in such disputes was unsuccessful.

4. *Testamentary causes.*[108]

It must be assumed that the church from the time of William's ordinance (*circ.* 1070) drew the decision of testamentary causes to itself.[109] Even in Glanvilla (*circ.* 1180–90) the competence of the ecclesiastical courts in this respect is recognized.[110] And afterwards the principle was repeatedly confirmed.[111]

It is here to be observed that, from the Norman conquest to the reign of Henry VIII, in England a testamentary disposition as to land was by strict

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assignatione, nihil proprietatis pertinet ad mulierem, nisi tantum seysina et liberum tenementum ad vitam suam.

For full statements of procedure in action for dower (*dos*) see Bracton, Book IV, tract. 6 (IV, 450 ff.); *Fleta*, Book V cc 17–21; Britton, Book V cc 7, 8, 10; Rad. de Hengham, *Summa Parva* c 3. Example of inquiry of the ecclesiastical court and answer of latter (1279) in a question whether a marriage had taken place or not, in *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77) I, 11. See also *Fleta*, Book VI c 16 § 4 . . . (*Judex secularis*) . . . *inquirere poterit de dote mulieris utrum dotata fuerit ad ostium Ecclesiae necne, et utrum sponsalia publica fuerint vel clandestina* . . . Similarly Bracton, *l.c.*; especially c 9 (IV, 508).

[108] Cf. the account in Prynne, *Records* III, 140. For the special regulations as to the estates of spiritual persons see § 27, note 21.

[109] But in some places the competence of the lord of the manor remained. Cf. 1 & 2 *Phil. & Mar.* (1554 and 1554/5) c 8 s 22; maintained are the rights of such *Temporall Lords and Possessioners* . . . , *as by auncient Custome have enjoyed Probate of Testamentes of their Tenantes or other.* Answer of the king to the complaint of the clergy, 1279–85 (*Rer. Brit. Scr.* No. 61, p. 70) c 4: . . . *in civitate London. ex consuetudine probatur testamentum coram majore;* . . .

[110] Glanvilla, Book VII c. 6: *Debet autem testamentum fieri coram duobus vel pluribus viris legitimis, clericis vel laicis, et talibus qui testes inde fieri possunt idonei. Testamenti autem executores esse debent ii quos testator ad hoc elegerit et quibus curam ipsam commiserit. Si vero testator nullos ad hoc nominaverit, possunt propinqui et consanguinei ipsius defuncti ad id faciendum se ingerere. Ita quod si quem, vel haeredem vel alium, rerum defuncti reperiunt detentorem, habebunt breve domini Regis Vicecomiti directum in haec verba.* c 7: *Rex Vicecomiti salutem: Praecipio tibi quod juste et sine dilatione facias stare rationabilem divisam* (=division according to testament) *N. sicut rationabiliter monstrari poterit quod eam fecerit et quod ipsa stare debeat* . . . c 8: *Si quis autem authoritate hujus brevis conventus, aliquid dixerit contra testamentum ipsum; scilicet quod non fuit rationabiliter factum, vel quod res petita non fuerit ita ut dicitur legata, tunc quidem placitum illud in Curia Christianitatis audiri debet et terminari, quia placitum de testamentis coram judice ecclesiastico fieri debet* . . . Book XII c 17: *Rex Vicecomiti salutem. Praecipio tibi quod juste et sine dilatione facias tenere rationabilem divisam R. quam fecit fratribus Hospitalis Hierusalem de catallis suis, sicut rationabiliter monstrari poterit quod eam fecit et teneri debeat. Teste etc.* For a limitation see the answer of the king to the petition of the clergy of 1280 and 1300 (in the petition of 1309, Wilkins, *Conc.* II, 316): *De domibus et molendinis, ac similibus, judex ecclesiasticus non potest cognoscere, an sint legabilia; sed bene potest cognoscere invento, quod sint legabilia, an sint legata; et cum constiterit, compellere, ut solvantur.* Similarly in the main the answer to the petition of 1279–85 c 4 (*Rer. Brit. Scr.* No. 61, p. 72).

[111] Cf. above, notes 79, 80.

law only allowable in certain cases, though considerable evasions of the rule occur apparently from the middle of the thirteenth century onward.[112]

Issues as to debts due to deceased persons were claimed for the church courts, though the claim was not conceded; but actions for the payment of bequests belonged properly thereto.[113]

Ecclesiastical ordinances imposed on a testator the duty of devising a part of his estate for pious purposes. The priest who received the last confession was to use his influence to that effect. It was apparently in connexion here-

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[112] Glanvilla, Book VII c 1: . . . *Licet . . . cuilibet de terra sua rationabilem partem pro sua voluntate, cuicunque voluerit, libere in vita sua donare* (the donation has, however, as against the heir only effect if possession is given in the lifetime of the donor); *in extremis tamen agenti non est cuiquam hactenus permissum; . . . Potest itaque quilibet sic totum questum* (in opposition to what he has inherited) *donare in vita sua, sed nullum haeredem inde facere potest, neque Collegium, neque aliquem hominem; quia solus Deus haeredem facere potest, non homo . . .* c 5: . . . *Cum quis in infirmitate positus testamentum facere voluerit, si debitis non sit involutus, tunc omnes res ejus mobiles in tres partes dividentur aequales; quarum una debetur haeredi, secunda uxori; tertia vero ipsi reservatur; de qua tertia liberam habebit disponendi facultatem; verum si sine uxore decesserit, medietas ipsi reservatur. De haereditate vero nihil in ultima voluntate disponere potest, ut praedictum est.* Cf. also mandate of Henry III to a judge (*Rotuli Clausarum* I, 169): *Mandamus vobis quod teneri faciatis testamentum Ade de Gurduñ quod fecit de rebus suis mobilibus . . . secundum disposicionem testamenti excepta terra quam de dono nostro habuit;* further, the answer of Edward I to a petition of the clergy, 1279–85 (*Rer. Brit. Scr.* No. 61 p. 70) c 4: . . . *consuetudo est in plerisque civitatibus et burgis quod una domus potest legari in testamento et alia vicina non, quia est de baronia, et illa non est legabilis, ut utamur verbis suis, vel quia hodie potest esse legabilis et cras non, quia forte venditur, et emptor ejusdem possessionis potest legare eam; sed si filius ejus eam habuerit per successionem, non est legabilis; . . .* On the law in the Anglo-Saxon period see Lodge, *The Anglo-Saxon Land Law* pp. 107 ff. in *Essays in Anglo Saxon Law*, Boston, 1876. On the evasions from the middle of the thirteenth century cf. F. W. Maitland in *The Law Quarterly Review*, 1891, p. 68.

Not before 32 *Hen. VIII* (1540) c 1 and 34 & 35 *Hen. VIII* (1542/3) c 5 was it allowed to devise all free property and two-thirds of a knight's fee. The last bonds of feudalism were removed by the enactment of the Cromwellian parliament, 1656 c 4, and after the restoration by 12 *Car. II* (1660) c 24.

[113] Bracton, Book V, tract. 5 c 10 § 2 (VI, 212): *Item nec locum habebit prohibitio, si testator pecuniam sibi debitam legaverit, dum tamen debitum in vita testatoris recognitum sit et probatum, quia hujusmodi pecunia inter bona testatoris connumeratur, et pertinet ad executores. Si autem petatur debitum per executores, de quo debitores in vita testatoris confessi non fuerint nec convicti, vel nec post mortem gratis recognoverint, . . . in foro seculari oportebit agere, . . .—Articuli episcoporum* 1285, c 9: *Ut cognitio debitorum defuncti pertineat ad praelatos, ad quos pertinet cognitio testamenti, ne occasione dimissionis causae consumantur bona testamenti; quia propter hoc frequenter ultima voluntas defuncti minime adimpletur, imo verius impeditur. Responsio: Quod praelati habeant cognitionem de debitis defunctorum, non conceditur.*—Diocesan synod of *Exeter*, 1287 (Wilkins, *Conc.* II, 129) c 50: . . . *excommunicamus omnes executores, quovis modo impedimentum praestantes, vel aliter recusantes in foro ecclesiastico a defuncti creditoribus conveniri, vel ipsis, sicut decet, inibi respondere. Item omnes illos, qui . . . impediant quoquo modo, quo minus in foro ecclesiastico ab executoribus defuncti libere valeant conveniri.*—Cf. the answer of the king to the petitions of the clergy in 1280 and 1300 touching ecclesiastical competence in devises (in the petition of 1309, Wilkins, *Concilia* II, 315): *Quod legatum aut invenitur in bonis defuncti praesentialiter, sive sit pecunia, sive alia res mobilis, et tunc indistincte coram*

with that the authorities of the church at a later time claimed free disposal of all parts of an estate not *specifically* bequeathed by testament.[114]

In the assize of Northampton, 1176, it is prescribed to the heirs to divide the chattels of the deceased according to the provisions of the will.[115] Supervision of the practical execution of the will seems to have been in Glanvilla's time still rather the affair of the secular authorities than of the ecclesiastical.[116] At any rate, he makes no mention of the co-operation of the church. *Magna Carta* leaves the carrying out of a will to the executors, and likewise has no mention, in this respect, of any control by the church.[117] Such control was not gained until the time of Henry III (1216–72), probably in the first years of his reign,[117a] and perhaps in connexion with the rights conceded in regard to intestacies.

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judice ecclesiastico peti debet, aut non invenitur praesentialiter in bonis defuncti, sed in manibus debitoris, qui defuncto in hujusmodi obligatur; et tunc indistincte ab executoribus vel legatariis coram judice seculari peti debet, coram quo defunctus rem hujusmodi haberet petere, si vellet: nec enim propter mortem defuncti debet fieri deterior conditio debitoris; quod foret, si forum sibi conveniens mutare in ecclesiasticum cogeretur; unde, si talia coram ecclesiastico judice repetantur, regia prohibitio locum habet. (The consideration that the position of the debtor ought not to be made worse by the death of the creditor is also expressed in the king's answer to the petition of 1279–85 c 3, *Rer. Brit. Scr.* No. 61, p. 71.)

[114] Complaint of the representatives of the beneficed clergy of the archdeaconry of Lincoln in the parliament of 13th Oct. 1255 (*Annales de Burton; Rer. Brit. Scr.* No. 36; *Annales Monastici* I, 361): *Item gravati sunt, quod indistincte legata quae secundum voluntatem decedentium in usus pauperum, parentum et servientium, et in alios pios usus dividi deberent et distribui, domino regi sunt concessa in alios usus, contra voluntatem decedentium convertenda . . .* Diocesan council of *Exeter*, 1287 (Wilkins, *Concil.* II, 129) c 50: . . . *In fine autem cujuslibet testamenti hanc clausulam adjici volumus generalem: Caetera omnia bona mea, sive in rebus, sive in manibus fuerint debitorum, in hoc testamento specialiter non expressa, volo, ut pro animae meae salute per manus executorum meorum in pios usus distribuantur; . . .* On the pope's claim in 1273 and 1307, see below, note 128. Cf. also *Fleta*, lib. VI c 14 § 7 (above, note 80).

[115] Assize of *Northampton*, 1176 (printed in Stubbs, *Select Charters* 4th Ed. 150) c 4: *Item si quis obierit francus-tenens, haeredes ipsius remaneant in tali saisina qualem pater suus habuit die qua fuit vivus et mortuus, de feodo suo; et catalla sua habeant unde faciant divisam defuncti: . . . Et uxor defuncti habeat dotem suam et partem de catallis ejus quae eam contingit . . .*

[116] Glanvilla, Book XII c 20: *Rex Vicecomiti salutem: Praecipio tibi quod juste et sine dilatione facias habere A. quae fuit uxor R. rationabilem Dotem suam de toto Feodo quod fuit praefati R. integre et in omnibus . . . ; et non remaneat eo quod Feodum praefati R. sit de Baronia mea, quia nolo nec Jus exigit quod uxores militum propter hoc amittant Dotes suas. De catallis autem quae fuerunt praefati R. praecipio quod ea omnia simul et in Pace esse facias, ita quod inde nil amoveatur nec ad divisam suam faciendam, nec ad aliam rem faciendam, donec debita sua ex integro reddantur; et de residuo post fiat rationabilis divisa sua secundum consuetudinem terrae meae. Et si quid de catallis praefati R. remotum fuerit post mortem suam, reddatur ad alia catalla sua, ad solvendum inde debita sua. Teste etc.*

[117] *Magna Carta* of 1215 c 23 (append. VII).

[117a] The inference that the *state* at any rate no longer at that time superintended the execution of wills seems to be justified by the fact that the writs that are mentioned in Glanvilla, Book VII c 7 and Book XII c 17 (printed above, note 110) are not contained in a collection of *Brevia de cursu* of 1227 (MS. Cotton Tulius D. 11 f. 143 b.) and in a similar collection (MS. Cambridge Ti. VI, 13) of about the same time. Maitland, *The History of the Register of Original Writs* in *Harvard Law Review* III, 168, November, 1889.

5. *Disposal of an estate in case of intestacy.*[118]

The movable property of a person dying intestate fell according to older Norman law to the feudal lord.[119] But Henry I, in a charter dating from 1101, granted to the nearest kinsmen of intestate vassals the right of disposing of the movables at discretion for the good of the soul of the departed.[120]

Similarly Stephen in his charter of 1136 conceded that the distribution of the estate of an *ecclesiastical* person, if he left no will, should be for the welfare of his soul as the *church* should determine.[121]

In opposition, however, to the charter of Henry I, Glanvilla (*circ.* 1180–90) again advances the opinion that the movables of an intestate vassal lapsed to the feudal lord.[122] Neither by Glanvilla nor by other writers of the time of Henry II is mention made of any co-operation of the ecclesiastical authorities in administering the estate of an intestate layman.

In the *Magna Carta* of 1215 the clause in Henry I's charter was, in the main, repeated; the distribution of the estate was to be by the kinsmen and friends of the deceased; added was the rule that the authorities of the church were to

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[118] Cf. the account in Prynne, *Records* III, 18 ff.

[119] Originally this was by way of forfeiture, as a punishment because the deceased, by not calling in a priest to receive his last wishes, had avoided confession and the assignment of a bequest (which it was the priest's duty to urge upon him) for charitable purposes. See more in Du Cange, *Glossarium*, *s.v.q.e. intestatio.*

[120] *Carta Henrici I*, 1100 (printed in *Stat. of Realm* I, 1 and by Liebermann in *Transactions of the Royal Historical Society*, 1894, p. 40) c 7: *Et si quis baronum vel hominum meorum infirmabitur, sicut ipse dabit vel dare disponet pecuniam suam, ita datam esse concedo. Quodsi ipse preventus vel armis vel infirmitate pecuniam suam non dederit nec dare disposuerit, or uxor sua-sive liberi aut parentes aut legitimi homines eius eam pro anima eius dividant, sicut eis melius visum fuerit.* Co-operation of the church is not mentioned.— On the law in the Anglo Saxon period cf. *Knut* (1016–35) II c 70: *And gif hwâ cwydeleâs of þyssum life gewite, sŷ hit þurh his gŷmeleâste, sŷ hit þurh faerlîcne deâð, þonne ne teô se hlâford nâ mâre on his ðehte, butan his rihtan here-geate. Ac beô be his dihte seô ðeht gescyft swîðe rihte wîfe and cildan and nêh-magon, aelcum be þære mâðe þe him tô gebyrige.* ("And if any one depart this life intestate, be it through his neglect, be it through sudden death; then let not the lord draw more from his property than his lawful heriot. And, according to his direction, let the property be distributed very justly to the wife. and children, and relations; to every one according to the degree that belongs to him"); c 78: *And se man þe aet þâm fyrdunge aetforan his hlâforde fealle, sŷ hit innan lande sŷ hit ût of lande, beôn þâ here-geata forgyfene and fôn þâ yrfe-numan tô lande, and tô ðehtan and scyftan hit swîðe rihte.* ("And if a man fall before his lord in the 'fyrdung,' be it within the land, be it without the land, let the heriots be forgiven; and let the heirs succeed to the land and the property, and divide it very justly.")

[121] *Si quis episcopus vel abbas vel alia ecclesiastica persona ante mortem suam rationabiliter sua distribuerit vel distribuenda statuerit, firmum manere concedo. Si vero morte praeoccupatus fuerit, pro salute animae ejus ecclesiae consilio eadem fiat distributio.* (Append. II.)

[122] Glanvilla, Book VII c 16: . . . *Cum quis vero intestatus decesserit, omnia Catalla sua sui Domini esse intelliguntur* . . . Cf. also *Rotulus Magnus* 18 *Hen. II rot.* 9 *dorso* '*Abbatia de Bello*' (quoted by Prynne, *Epist. Dedic.* to *Records* III): *Petrus de Bello red. Comp. de XXXIV lib. et XIV sol. de Catallis Pelokini Ballivi de Abbatia, qui obiit Intestatus. In thesauro liberavit, et quietus est.* Rad. de Diceto (*Rer. Brit. Scr.* No. 68) II, 68: . . . *Qui* (*Galfridus Heliensis episcopus*) *quoniam intestatus decessit* (21st Aug. 1189, after Henry II's death, before coronation of Richard I), *ejus bona confiscata sunt universa.*

be concerned in the division.[123] All the provisions mentioned of *Magna Carta* were omitted in the confirmation of 1216, and never reinserted. Nevertheless the church now remained—with occasional disturbances[124]—in possession of the right once conceded her,[125] and even extended it so far as to claim the administration of the estate for the bishop alone, and to leave it to him to determine the measure in which he should consult the kinsmen or friends of the deceased.[126] In the second half of the thirteenth century the view was in isolated cases upheld that to the bishop belonged not only the administration but the free disposal of the estate, that he could retain a part for himself, and that he was not even bound to discharge first the debts of the dead man. It is apparently against this view that a constitution of legate Othobon is directed.[127] The

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[123] *Magna Carta* of 1215 c 27: *Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum et amicorum suorum, per visum ecclesiae distribuantur, salvis unicuique debitis quae defunctus ei debebat.* (Cf. also c 11; append. VII).

[124] Complaint of the clergy at the council of *London*, 1257 (Wilkins, *Concilia* I, 726) c 25: *Item, mortuo laico intestato, dominus rex et caeteri domini feodorum, bona defuncti sibi applicantes, non permittunt de ipsis debita solvi, nec residuum in usus liberorum et proximorum suorum, et alios pios usus per loci ordinarium, quorum interest, aliqua converti.* Similarly council of *Merton*, 1258 (Wilkins, *Conc.* I, 740, after *Ann. Burton*), Const. of archbishop Boniface at council of *Lambeth*, 1261 (Wilkins, *Concilia* I, 746 ff.), complaint of the clergy and king's answer in 1279–85 (*Northern Registers, Rer. Brit. Scr.* No. 61, p. 70) c 7, and the constitution, to be connected with that of 1261, of archbishop Stratford at the council of *London*, 1342 (Wilkins, *Conc.* II, 702) c 7. Letter of archbishop Peckham to the Welsh prince Llewellyn, 20th Oct. [1279], *Regist. Epist. Peckham* (*Rer. Brit. Scr.* No. 77) I, 77.

Cf. also letter of pope Alexander IV, 25th August, 1256 (Rymer, *Foedera* 4th Ed. I, 345):—

Alexander . . . dilecto filio magistro Rostanno, capellano et nuncio nostro in Anglia, salutem et apostolicam benedictionem.

Volemus et praesentium tibi auctoritate mandamus, quatinus omnia bona mobilia ab intestato decedentium, sive de regno Angliae, sive de aliis terris carissimi in Christo filii nostri . . . illustris Regis Angliae fuerint, pro illa portione, quae juxta patriae consuetudinem decedentes contingit (local usage, varying as to details, regarded part of the estate as belonging to the wife and children, and only part as belonging to the deceased that is subject to his free disposal). Cf. Glanvilla, Book VII c 5 (above, note 112) and Reeves, *Hist. of Engl. Law* c 25; 3rd Ed. IV, 82), *integre per te, vel per alium, seu alios, colligens, quicquid de hiis collegeris in aliquibus tutis locis deponere, ac ad opus carissimi in Christo filii nostri . . . illustris Regis Angliae* (*ut votum suum efficacius exequi valeat*) *conservare procures; . . .*

[125] Bracton (*Rer. Brit. Scr.* No. 70) I, 480: *Item si liber homo intestatus et subito decesserit. dominus suus nil intromittat* [*se*] *de bonis defuncti, nisi de hoc tantum, quod ad ipsum pertinuerit s. quod habeat suum herioth, sed ad ecclesiam et ad amicos pertinebit executio bonorum, nullam enim meretur poenam quis, quamvis decedat intestatus.*

[126] Among the earliest of such provisions are the resolutions of the councils in the Isle of *Man*, 1239 (Wilkins, *Concilia* I, 664): *Bona intestatorum ad arbitrium episcopi dioecesani, vel ejus in absentia, sui generalis vicarii ministrentur.* Cf. also in particular the constitution of archbishop Boniface at the council of *Lambeth*, 1261 (Wilkins, *l.c.* I, 746 ff.): Those feudal lords shall be excommunicated who *bona . . . intestatorum non permiserint pie distribui in usus misericordiae, pro dispositione ordinariorum, saltem pro ea portione, quae defunctum contingit . . .*

[127] Const. of Othobon, 1268 (Wilkins, *Concilia* II, 1) c 23: *. . . agit humana pietas misericorditer in defunctum, cum res temporales, quae illius fuerant, per distributionem in pios usus* (in ecclesiastical language this in-

state too opposed the claim and compelled, in particular, the payment of the debts by the bishops.[128] From the beginning of the fourteenth century the law became in substance this: the estate was, as to the greater part, to be distributed among the kinsmen; as to the smaller part, to be devoted to charitable purposes; lastly, the bishop might retain a small fee for his trouble in administering.[129] Furthermore, an act of Edward III restored as to procedure the state of affairs contemplated in *Magna Carta*, the administration and distribution of the estate being assigned to the kinsmen and friends, whilst the bishop was confined in the main to supervision.[130]

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cluded, as a rule, distribution to the kinsmen; cf. also Reeves, *Hist. of Engl. Law* 3rd Ed IV, 80) *ipsum juvando sequuntur, et coram caelesti judice pro ipso propitiabiliter intercedunt. Proinde super bonis ab intestato decedentium provisionem, quae olim a praelatis regni Angliae cum approbatione regis et baronum dicitur emanasse* (*Magna Carta* is probably meant; no other ordinance is known to which the reference might be), *firmiter approbantes, districte inhibemus, ne praelati vel alii quicunque bona intestatorum hujusmodi quocunque modo recipiant vel occupent contra praemissam provisionem.*—Cf. also diocesan council of *Exeter*, 1287 (Wilkins, *Concilia* II, 129) c 50: *Si qui vero laicorum decesserint intestati, de bonis eorum per locorum ordinarios taliter praecipimus ordinari, ut pro anima defuncti in pios usus totaliter erogentur.*

[128] *Magna Carta* 1215 c 27: . . . *salvis unicuique debitis quae defunctus ei debebat.* 13 *Ed. I* (1285) *Stat. Westminster II* c 19: *Cum post mortem alicuius decedentis intestati et obligati aliquibus in debito, bona deveniant ad ordinarios disponenda, obligetur decetero Ordinarius ad respondendum de debitis, quatenus bona defuncti sufficiunt, eodem modo quo executores hujusmodi respondere tenentur si testamentum fecisset.* Cf. *Articuli, quibus videtur ecclesiae praejudicari per statuta domini regis ultimo edita in suo parliamento, anno Dom.* 1285 (Wilkins, *Concilia* II, 119), c 1: *Contra hoc, quod praelati solebant habere liberam facultatem disponendi de bonis intestatorum, tam quoad solvenda debita defuncti, quam etiam quoad eadem bona pro anima ejusdem in pios usus alias convertendi; videtur dominus rex ad se trahere cognitionem quoad debitorum solutionem.*

The parliament of Carlisle, 1307, complained that William Testa claimed for the pope the *biens et chateux des testatours generaument* (in opposition to *distinctement*) *en lour testamentz nommez*, furthermore, the *biens et chateux des intestats: . . . les biens des Intestats par grantz de Rois, deivent par l'ordenaire du lieu estre donez et departies pur l'alme le mort.* The king accordingly issued an ordinance to check the papal demands. (*Rotuli Parliamentorum* I, 219 ff.) [In 1273 the pope sent two nuncios to England who, among other things, were to make inquiry *De bonis episcoporum aliorumque praelatorum defunctorum ab intestato* and *De indistincte legatis. Ann. de Wintonia* (*Rer. Brit. Scr.* No. 36) II, 113.]

[129] The const. of archbishop Stratford at the council of *London*, 1342 (Wilkins, *Conc.* II, 702 ff.) cc 7, 8, to be connected with the constitution of Boniface (1261), sets forth again the claims of the church to administer and divide the estates of those dying intestate or testate. c 8: . . . *statuimus, quod episcopi, et alii inferiores judices nostrae provinciae de bonis clericorum beneficiatorum, quos testari posse constat, de consuetudine regni Angliae, seu aliorum testantium quorumcunque, . . . nullatenus se intromittant; sed executores testamentorum ipsorum permittant libere disponere de eisdem, necnon ab intestato decedentium, solutis debitis eorundem, bona, quae supererint, in pias causas, proximis decedentium consanguineis, servitoribus, et propinquis, seu alias pro defunctorum animarum salute distribuant et convertant; nihil inde sibi retento, nisi forsitan aliquid rationabile pro ipsorum ordinariorum labore fuerit retinendum, . . .* Cf. also constit. of archbishop Chichele, 1416. (Wilkins, *l.c.* III, 377.)

[130] 31 *Ed. III* (1357) st. 1 c 11: . . . *en cas ou homme devie* (=dies) *intestat, les ordinairs facent deputer de plus proscheins et plus loialx amis du mort*

Substantially the law stood thus until the reformation and beyond it.[131]
In disputes as to immovable estate the ecclesiastical courts were never competent.

6. *Suits in respect of tithes.*[132]

Whether as a consequence of William's ordinance the ecclesiastical courts were at once recognized as competent in suits touching tithes, is not ascertainable. The earliest cases known of such actions in them occur in the time of Stephen.[133] But from all the reigns from William I to Henry II there are cases on record of suits for tithes being tried in the secular court.[134] Nor can we discover that that court was restricted to any particular suits of the kind; possession and property in tithe were both taken cognizance of before it.

Archbishop Becket condemned all consideration of tithe causes by the secular court.[135] Subsequently, from the end of the twelfth century, the competence of the secular courts seems to have been curtailed in favour of the ecclesiastical. By the middle of the thirteenth century the rule was acknowledged even on the part of the state that the latter were solely competent.[136]

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intestat, pur administrer ses biens; les queux deputez eient accion a demander et recoverer come executours les dettes dues au dit mort intestat, en la Court le Roi pur administrer et despendre pur lalme du mort; et respoignent auxint, en la Court le Roi, as autres as queux le dit mort estoit tenuz et obligez, en mesme la manere come executours respondront; et soient accountables as ordinairs, si avant come executours sont en cas de testament, sibien de temps passe come de temps avenir.—This act is to be regarded as amending 13 *Ed. I* (1285) *Westminster II* c 19 (note 128). It is interpreted as in the text by Gibson, *Codex* 478 and Finlason, note c in Reeves, *History of Engl. Law*, Ed. of 1869, II, 270.

[131] Cf. *e.g.* Coke, *Instit.* III c 69 and IV c 74 p. 336: If any one dies intestate, the bishop (or his judge), after hearing the administrator as to the necessities of the family, and certain forms being observed, may raise an appropriate sum from the estate to be applied *in pios usus.*

[132] On the limits of competence of secular and ecclesiastical courts see the account in Selden, *The Historie of Tithes*, 1618, pp. 414 ff.; on tithe-law see William Easterby, *The History of the Law of Tithes in England*, Cambridge, 1888.

[133] Judgment of the bishop of Llandaff in 1146 on parish boundaries and tithes dependent thereon in a suit between monks and a chaplain, in Bigelow, *Placita Anglo-Normannica* p. 155. Suit of the monks of Northampton against Anselm de Cochis for two-thirds of the tithes: *In plenaria Synodo coram Roberto Lincolniensi Episcopo disrationaverunt;* cited by Selden, *l.c.* 414. See further several cases mentioned in the letters of John of Salisbury (Migne, *Patrologiae Cursus*, vol. 199).

[134] Numerous examples in Selden, *l.c.* 416 ff.; see also in Bigelow, *l.c.* 137, 162, 197 etc.

[135] Becket condemned at Vezelay (1166) the provision alleged by him (he had probably c 1 in view) to be contained in the constitutions of Clarendon: *quod laici, seu rex seu alii. tractent causas de ecclesiis vel decimis.* Report of Becket to Alexander III. *Materials for Hist. Becket; Rer. Brit. Scr.* No. 67; V, 388.

[136] Answer of king to complaint of clergy (*circ.* 1245? Cole, *Documents* 354) art. 3: . . . *De decimis et oblationibus ad capellas predictas* (the king's free churches) *et prebendas earum spectantibus, arguit Rex Prelatos si inde cognoscant, racione exempcionis supradicte. De aliis autem decimis non intromittit se Rex nisi tantum de jure patronatus earundem* . . . Cf. the passages cited in note 80 from Bracton, *Fleta* and Britton.

9 *Ed. II* st. 1 (1315/6) *Art. Cleri* c 1: . . . *Rex ad istum articulum respondet, quod in decimis, oblacionibus, obvencionibus, mortuariis, quando sub istis nominibus proponuntur, prohibicioni regie non est locus, eciam si propter detencionem istorum diuturnam ad estimacionem earundem pe-*

This rule, however, was subject to numerous exceptions, of which three are to be pointed out:—

a. The secular court intervened by prohibition when before the ecclesiastical court tithes were demanded from sources of income not before tithable.[137]

b. A particular kind of prohibition, what was called a *writ of indicavit*,[138] was issued when, owing to the result of the tithes suit in the ecclesiastical court, the interest of the patron of the benefice might be affected. That interest was, in particular, concerned when the holder of the benefice, presented by the patron, was sued for having improperly annexed tithes belonging, not to his, but to another benefice. The king's court in intervening in such cases relied on its exclusive competence in questions of patronage. But from the second third of the thirteenth century the royal tribunals confined themselves to issuing the writ of indicavit only when the tithes sued for formed a considerable part of the income of the benefice, or when a considerable interest of the patron was at stake. After long uncertainty in practice up to what fraction of the income proceeding before the ecclesiastical court should be allowed, one-fourth was ultimately fixed as the limit. For larger sums the secular courts remained, as before, exclusively competent.[139]

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cuniariam veniatur. Set si clericus, vel religiosus, decimas suas in orreo suo congregatas, vel alibi existentes, vendiderit alicui pro pecunia, si petatur pecunia coram Judice ecclesiastico, locum habet prohibicio, quia per vendicionem res spirituales fiunt temporales, et transeunt decime in catalla.

1 *Ric. II* (1377) cc 13, 14 confirm the right of the ecclesiastical courts to adjudicate as to tithes. c 13: . . . *dismes, et autres choses, queles de droit deyvent et de aunciene soloient appartenere a mesme la Court Chrestiene* . . .

[137] Complaint of the clergy, 1237 (*Ann. de Burton; Rer. Brit. Scr.* No. 36; *Ann. Monast.* I, 254): . . . *quod judices saeculares non decidant causas ecclesiasticas in foro saeculari*, . . . *et utrum dandae sint decimae de lapicidinis vel silvecaediis, vel herbagiis, vel pasturis, vel de aliis decimis non consuetis.*—Answer of the king to the complaint of the clergy, 1279–85 (*Rer. Brit. Scr.* No. 61 p. 70) c 5: In future no prohibition, *Quia de tali molendino hactenus decimae non fuerunt solutae*, shall be issued when the rector claims before the spiritual judge tithe from the newly erected mill. Similarly 9 *Ed. II* st. 1 (1315/6) *Articuli Cleri* c 5.—45 *Ed. III* (1370/1) c 3: When wood twenty or more years old is cut, rector and vicar sue in the ecclesiastical court for tithe therefrom *el noun* (=nom) *de ceste parole 'Silvae caeduae'; est ordeine et etabli qe prohibicion en ce cas soit grantee, et sur ce attachement, come ad este avant ces heures.*

[138] Cf. the original form of the writ as preserved by Glanvilla, note 153; so almost identically in Bracton, Book V, tract. 5 c 4 § 2 (VI, 174). For the form given to this writ in the case mentioned in the text see Bracton, *l.c.* § 3.

[139] Complaint of the clergy, 1237 (*Ann. de Burton; Rer. Brit. Scr.* No. 36; *Ann. Monastici*) I, 255: *Item ne currat prohibitio, ne judices ecclesiastici cognoscant de iure patronatus, quo minus clerici possint petere decimas tanquam de jure communi ad ecclesias suas pertinentes, quia patroni ecclesiarum vel capellarum qui decimas petitas possident, dicunt per talem petitionem juri patronatus sui derogari, et nolunt justiciarii domini regis judicare quota pars decimarum peti possit vel debeat coram judice ecclesiastico, ad hoc quod non praejudicatur juri patronatus scilicet jurare.*

Bracton, Book V, tract. 5 c 4 § 2 (VI, 174): *Si* . . . *contentio fuerit inter rectores de aliquibus decimis quae estimari possunt usque ad quartam, quintam, vel sextam partem advocationis, et ultra quam partem non extenditur prohibitio ut videtur, tunc fiat judicibus prohibitio in hac forma. Rex talibus judicibus salutem. Indicavit nobis* . . .

13 *Ed. I* (1285) *Circumspecte agatis*, first part: Let the ecclesiastical court be competent, *si Rector petit decimam majorem vel minorem dummodo non petatur quarta pars alicujus ecclesie.* (In the second part, probably originally not belonging here, there is a provision almost *verbatim* as in *Art. Cleri* c 2.) Cf. also 13 *Ed. I* (1285) *Stat. Westminster II* c 5 *sub fin.*: *Et cum per breve In-*

c. Under special conditions, which, however, are not precisely known,[140] actions for tithes could be made triable immediately before the king's court (*writ of scire facias*). The institution of such proceedings was in 1344 forbidden by statute, the rights of the king being, nevertheless, reserved.[141] Instances of the procedure are found in later times; they were probably justified by the reservation indicated, freely interpreted.[142]

7. *Disputes touching other dues to the parish priest, touching corodies etc.*

The right of the ecclesiastical courts to deal with such causes was at no time contested.[143]

8. *Disputes in reference to church property.*

Perhaps the charter of Stephen (1136) is to be understood as meaning that he

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dicavit impediatur rector alicujus ecclesie ad petendum decimas in vicina parochia, habeat patronus rectoris sic impediti breve ad petendum advocationem decimarum petitarum. Et cum disracionaverit procedat postmodum placitum in curia Christianitatis, quatenus disracionatum fuerit in curia Regis.

Complaint of the clergy in 1309 (Wilkins, *Conc.* II, 318): *Item breve, quod dicitur 'Indicavit,' quod de sui natura locum habet in certis casibus, per quosdam justitiarios minus provide jam extenditur ad causas in foro ecclesiae agitatas super spoliatione decimarum* [according to Bracton, Book V, tract. 5 c 10 § 6 (VI, 216), in case of a *recens spoliatio*, as there was no patron's interest concerned, the ecclesiastical court should be competent], *vel etiam super decimis in parochiis alienis contra jus commune receptis. Praeterea quoddam breve super eodem a paucis retroactis temporibus est formatum sub tali forma, 'Indicavit,' etc. quod cum tales religiosi teneant quartam partem talis ecclesiae de advocatione propria, et talis rector inde trahat eos in placitum, etc. et ita cognitio de spoliatione decimarum, vel de jure praeceptionis earum in alienis parochiis ab ecclesia minus juste aufertur; praesertim cum nullum indi placitum subsequenter teneatur, vel teneri valeat in curia laicali, et per consequens talis injuria cum gravi animarum periculo remanet totaliter incorrecta. Ad istum articulum respondet rex: Quodsi fiat contentio de jure decimarum, originem habens de jure patronatus, et earum decimarum quantitas extendat se ad tertiam partem bonorum ecclesiae, locum habeat regia prohibitio, . . .*

9 *Ed. II* st. 1 (1315/6) *Art. Cleri* c 2: *Item si sit contencio de jure decimarum, originem habens ex jure patronatus, et earundem decimarum quantitas ascendat ad quartam partem bonorum ecclesie, locum habet regia prohibicio, si hec causa coram ecclesiastico Judice ventiletur.*

[140] See more in Selden, *l.c.* 434 ff.

[141] 18 *Ed. III* (1344) st. 3 c 7. The *writ of scire facias* should no longer issue from Chancery, *savez* (=*sauvé*) *a nous notre droit, tiel come nous et noz auncestres avons eu, et soleions avoir de resoun.*

[142] Cf. 22 *Assis. pl.* 75 and 38 *Ass.* 20 (cited in Selden, *l.c.* 444 and in Reeves *l.c.* 3rd Ed. IV, 96).

[143] Bracton, Book IV, tract. 1 c 16 § 7 (III, 146): *cum . . . corodia sint quasi spiritualia, sive spiritualibus annexa, non est recurrendum (si detineatur) ad forum seculare, et quoniam in hujusmodi corodiis committi poterit simonia, ideo ad forum ecclesiasticum recurratur, . . .* Book V, tract. 5 c 2 § 5 (VI, 164): *. . . non pertinet ad regem . . . nec ad judicem secularem . . . cognoscere de iis quae sunt spiritualibus annexa, sicut de decimis et aliis ecclesiae proventionibus.* 13 *Ed. I* (1285) *Circumspecte Agatis* refers the cause to the ecclesiastical court, *si Rector petat mortuarium in partibus ubi mortuarium dari consueverit* and *si Prelatus alicujus ecclesie petat pensionem a Rectore sibi debitam.* Both references are repeated in 9 *Ed. II* st. 1 (1315/6) *Art. Cleri* c 1 with the addition *etiam si propter detencionem istorum diuturnam ad estimacionem earundem pecuniariam veniatur.*

intended to refer such disputes to the ecclesiastical courts.[144] As to a case belonging here, action in respect of free church land (frankalmoign), the competence of those courts is recognized in the constitutions of Clarendon (1164); the preliminary question whether the land claimed was free church land or a temporal fief was, however, if the issue was between a layman and a spiritual person, to be determined by the secular court.[145] After the statute of Westminster II (1285) the latter was also to be competent for the plea in seisin process between two ecclesiastical owners as to a certain piece of free church land.[146]

9. *Disputes as to the property of the clergy.*

The church repeatedly raised a claim to cognizance in such disputes. This claim coincided, for the most part, with the demand for the amenability of the clergy to their own courts in civil causes; like that demand, it could not be realized.[147]

10. *Actions upon contracts which were confirmed by oath or vow.*[148]

By the constitutions of Clarendon such actions were expressly excluded from the cognizance of the church courts.[149] This position was subsequently maintained by the state,[150] though the ecclesiastical courts were slow to submit.[151]

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[144] Appendix II. Cf. § 4, note 32.

[145] Const. of *Clarendon* c 9 (append. IV).—Glanvilla, Book XII c 25: . . . *si fuerit placitum inter duos Clericos de aliquo tenemento, quod sit de libera eleemosyna Feodi ecclesiastici, vel si tenens ipse Clericus teneat in libera eleemosyna Feodum illud ecclesiasticum, quicunque sit petens, placitum inde debet esse in Foro ecclesiastico de Recto; nisi petatur inde Recognitio utrum fuerit liberum Feodum ecclesiasticum vel laicum Feodum . . . Tunc enim, ista Recognitio, sicut quaelibet alia, in Curia domini Regis habet tractari.* For the formulary for the royal commission to the *Vicecomes*, whereby such a *recognitio* is initiated see Glanvilla, Book XIII c 24. This is what is called the *assisa utrum*. Of the proceedings thereat see full account in Bracton, Book IV, tract. 5 (IV, 366 ff.). On the development in the period between the constitutions of Clarendon and Bracton see F. W. Maitland, *Frankalmoign* in *The Law Quarterly Review*, 1891, pp. 359 ff.—A judgment (between 1135 and 1147) of the papal legate Imarus in an action between the bishop and the monks of Rochester will be found in Bigelow, *Placita* 160.—On possession *per liberam eleemosynam* see § 21, note 36.

[146] 13 *Ed. I* (1285) *St. Westminster II* c 24: . . . *Eodem modo sicut conceditur breve utrum aliquod tenementum sit libera elemosina alicujus ecclesie, vel laicum feodum talis, decetero fiat breve utrum sit libera elemosina talis ecclesie, vel alterius ecclesie, In casu quo libera elemosina unius ecclesie transfertur in possessionem alterius ecclesie.*

[147] Cf. above, near notes 74 ff.

[148] On *penal* proceedings for perjury see below, near notes 186 ff.

[149] c 15: *Placita de debitis, quae fide interposita debentur, vel absque interpositione fidei, sint in justitia regis.* As Güterbock, *Hen. de Bracton und sein Verhältnis zum römischen Recht*, pp. 106 ff., shows, informal contracts did not, according to older English law, give ground for action before the royal courts; hence is to be explained the extensive ecclesiastical jurisdiction which sprang up in civil causes touching breach of faith. See, however, also F. W. Maitland (for the Selden Society, 1891), *The Court Baron* p. 117, as to such actions before *inferior* secular courts.

[150] Bracton, Book V, tract. 5 c 2 § 2 (VI, 160): . . . *si in foro seculari agatur de aliquo placito quod pertineat ad coronam et dignitatem regis, et fides fuerit apposita in contractu, non propter hoc pertinebit cognitio super principali ad judicem ecclesiasticum.* c 6 § 1 (VI, 204): *Item jurisdictionem suam* (of the king) *non mutat fidei interpositio, sacramentum praestitum, nec spontanea renunciatio partium, quamvis sibi ipsis in hac parte praejudicent per consensum.*

[151] According to Stubbs, *Const. Hist.* III, 357, note 3 c 19 § 400, cases of debt

11. *Disputes as to advowson and patronage.*

It was in this sphere that the quarrel between church and state was fiercest. The state clung to its right as alone giving it security that the established agency of the king and other laymen in filling ecclesiastical offices should not be impaired by papal ordinances, on which the ecclesiastical courts might base their judgments. It had thus to contend in this sphere not only with the national church but also immediately with the pope.

The exclusive competence of the royal court in disputes about patronage is emphasized in the constitutions of Clarendon[152] and in Glanvilla,[153] and this was always the view represented in statutes, royal mandates and the law-books.[154] Several special modes of procedure in temporal courts were developed

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were long tried in court Christian; the Acts of the Ripon Charter for 1452–1506 containing 118 such cases. Like cases of the end of the 15th century are collected out of Hale, *Precedents and Proceedings* by Pollock, *Contracts in Early English Law* in *Harvard Law Review* VI, 403, March, 1893.

[152] c 1: *De advocatione et praesentatione ecclesiarum si controversia emerserit inter laicos, vel inter clericos et laicos, vel inter clericos, in curia domini regis tractetur et terminetur.*

[153] Glanvilla, Book IV, *De Advocationibus Ecclesiarum* (and in the passages cited in note 80) claims for the civil court exclusively both the plea as to the right (*de recto*) and as to the possession (*de possessione*) of the advowson and right of presentation. A special form of disputing possession in causes of advowson, the *assisa ultimae praesentationis*, had been (cf. Glanvilla, Book XIII c 1, note 80) introduced by statute. A writ of right was tried at the choice of the defendant, *per duellum* or by *Magna Assisa* (Glanvilla, Book IV c 6).

Cf. also Glanvilla, Book XIII cc 18 ff. c 20: . . . *Is cui sui vel alicujus antecessorum suorum adjudicabitur ultima praesentatio, eo ipso Seisinam ipsius Advocationis intelligitur dirationasse; ita quod ad praesentationem ipsius prima Persona in ea Ecclesia vacante per Episcopum loci instituetur, dummodo Persona idonea fuerit;* . . .

If proceedings are taken against each other by two clerks who derive their rights from different patrons, so that in reality the advowson is in dispute, a prohibition may be sought from the secular court, which then issues in the form of the writ Indicavit. This writ runs (Glanv., Book IV c 13): *Rex Judicibus illis ecclesiasticis salutem. Indicavit nobis R. quod cum J. Clericus suus teneat Ecclesiam illam in illa villa per suam praesentationem, quae de sua Advocatione est, ut dicit, N. clericus eandem petens ex Advocatione M. Militis, ipsum J. coram vobis in Curia Christianitatis inde trahit in placitum. Si vero praefatus N. Ecclesiam illam diracionaret ex Advocatione praedicti M. palam est quod jam dictus R. jacturam inde incurreret de Advocatione sua. Et quoniam lites de Advocationibus Ecclesiarum ad Coronam et dignitatem meam pertinent, vobis prohibeo, ne in causa illa procedatis, donec diracionatum fuerit in Curia mea, ad quem illorum Advocatio illius Ecclesiae pertineat.*

To the ecclesiastical court are, however, assigned various cases of action between the patron and the clerk in possession of the benefice, in so far as the advowson itself is not in question (Glanv., Book IV cc 9, 10). The letters of John of Salisbury show that under archbishop Theobald (1139–61) ecclesiastical courts decided disputes on advowson, and appeals were lodged to the pope. For instances of suits of advowson in the time of Stephen and the beginning of the time of Henry II, tried, some in the ecclesiastical, some in the secular court, see Bigelow, *Placita* pp. 174, 245, after *Chron. Monast. de Bello* (*Anglicana Christiana Soc.*) 110, 125.

[154] Instance in which the view was directly upheld: writ of Henry III to the archbishop of Armagh, 7th July, 1244 (Prynne, *Records* II, 628). Petitions of the clergy, 1280 and 1300, and king's answer at the time (in the petition of 1309, Wilkins, *Conc.* II, 320): *Item licet patronatus vicariarum, quae non ad laicum feodum, nec ad alias laicas personas, sed ad rectores ecclesiarum per-*

to try the issue *de possessione* of advowson.[155] Repeatedly in the thirteenth century the clergy raised the claim to determine all such issues. But the only point they carried was that the ecclesiastical judge should decide on the fitness of the presentee,[156] as also on the preliminary question whether the benefice was vacant;[157] moreover, a form of proceeding in ecclesiastical courts was retained for suits of advowson, but only as a sort of provisional examination, and with the limitation that the judgment of the spiritual court could be challenged by a suit of advowson before the secular court.[158] In the fourteenth century there were even ecclesiastical regulations issued that in case a benefice was vacant the bishop should regard the decision of the king's court in causes of advowson as authoritative.[159]

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tinent, tanquam mere spirituale ad forum ecclesiasticum debeat pertinere; curia tamen regia super patronatu hujusmodi vicariarum cognitionem usurpans, jurisdictionem ecclesiasticam super hoc impedit minus juste. Respondet rex: Quod aliquando praesentatio spectat ad rectores, aliquando ad alios, sed de jure patronatus cognitio semper ad regem pertinet. Letter of Edward III, 12th May, 1343 to the pope (Rymer, *Foedera* 4th Ed. II, 1223): The pope has granted a commission to determine a suit of advowson in Rome: . . . *sane, licet causae super jure patronatus quorumcunque beneficiorum ecclesiasticorum, regni nostri Angliae, inter personas cujuscumque conditionis et status agitandae, ac placita transgressionum et incarcerationum ibidem in curia nostra, et non alibi, tractari debeant et finiri* . . . The pope is accordingly begged to revoke his commission as involving an encroachment on the king's right.—Cf. also above, nr. notes 138, 139.—On the various forms for prohibitions in suits of advowson see Bracton, Book V, tract. 5 c 4 (VI, 172 ff.).

[155] *Quare impedit, quare non permittit, darrein presentment* etc. A full statement of these forms of proceeding in Bracton, Book IV, tract. 2 (IV, 1 ff.). Of older legislative regulations of these forms of proceeding cf. *Magna Carta* of 1215 cc 18, 19 (append. VII); of 1217 cc 13-15 (append. VII notes 14, 15; cf. Bracton II, 162); 43 *Hen. III* (1259) c 12; 52 *Hen. III* (1267) *Stat. de Marleberge* c 12; 13 *Ed. I* (1285) *Stat. Westminster II* cc 5, 30 (maintained in 12 *Ed. II* [1318] *Stat. Eboracense* c 4).

[156] So Glanvilla, Book XIII c 20 (above, note 153). King's answer to complaint of clergy (*circ.* 1245? Cole, *Documents* 354) art. 1: *Vocantur Prelati ad forum Domini Regis super eo quod ad ecclesias vacantes personas non admittunt ad presentacionem eorum qui jus patronatus earundem in Curia Regis evicerunt. In quo casu si racione juris patronatus quod Prelati ad se ipsos vel ad alios pertinere dicant presentatos hujusmodi admittere contradicant, per Principem argui consueverunt. Quod si causam aliam pretendant velut de inhabilitate presentati aut de aliis que ad forum ecclesiasticum solent pertinere, Princeps eos inde quo ad forum suum liberos et absque calumpnia dimittet* . . . 9 *Ed. II* (1315/6) st. 1 *Articuli Cleri* c 13: *Responsio. De idoneitate persone, presentate ad beneficium ecclesiasticum, pertinet examinacio ad Judicem ecclesiasticum; et ita est hactenus usitatum et fiet in futurum.*

[157] Bracton, Book IV, tract. 2 c 3 § 1 (IV, 34; cf. also pp. 36, 78, 80): *Et si de advocatione contentio habeatur utrum vacet vel non, super hoc erit ordinarius consulendus, episcopus vel alius qui super hoc habeat cognitionem, quia laicus de hoc cognoscere non potest,* . . . 25 *Ed. III* (1351/2) st. 6 c 8: *Item come les ditz Prelatz eient monstrez et priez remedie sur ce, qe les Justices seculers acrochent a eux conissance de voidance des benefices de droit, quelle conissance et discussion attient a Jugge de seinte eglise, et nient a lai Jugge; si voet le Roi et grante qe les dites Justices desore receivent tieles chalenges faites ou affaire par qecumqes Prelatz de seinte eglise, en celle partie, et outre ent facent droit et reson.*

[158] This form of proceeding in the ecclesiastical court, called *jus patronatus*, is mentioned *e.g.* in 1 *Ed. VI* (1547) c 2 s 2 as a branch of ecclesiastical jurisdiction. See more on the form in Phillimore, *Eccles. Law* 445 ff.

[159] Cf. *e.g.* the constit. of archbishop Stratford at the provincial council of

On the part of the state, the praemunire acts repeatedly laid stress on the competence of the secular courts in matters of advowson, and endeavour was made to exclude as far as possible papal encroachments in this direction.[160]

Side by side with this jurisdiction in civil causes, a jurisdiction which sprang up, for the most part, after the Norman conquest, the church still continued to exercise its old power to inflict penance. But the employment of such power it is still more difficult in this period than in the Anglo-Saxon to distinguish from that of judicial power proper, in civil or criminal causes. It is plain that even those living at the time were not clearly conscious wherein the distinction lay, to the obliteration of which three things contributed:—

1. Excommunication, originally of the nature of penance, became a general instrument for compelling the execution of all judgments of the ecclesiastical court, whether in civil or criminal causes.

2. The ecclesiastical courts endeavoured (following precedents in the Anglo-Saxon period)[161] to use their powers of inflicting penance in order to compel the payment of a money compensation to the injured. Thus by indirect means cognizance in civil suits, particularly where compensation was claimed, might have been transferred to them. The endeavour, however, was continuously opposed by the civil authorities.[162]

Probably this was the chief—even if not the sole—reason that the state in principle only allowed the prelates to impose by way of penance a corporal punishment, not a fine in addition; though the corporal penalty imposed could be redeemed by a money payment.[163]

London, 1342 (Wilkins, *Concilia* II, 696) c 12: . . . *Caeterum, ne in foro regio evincenti jus patronatus adversus alium sua victoria sit inutilis, si scribatur ordinario, quod admittat praesentatum ab illo, qui jus patronatus evicerit, ad beneficium hujusmodi, si de jure vacaverit, et de facto nihil obsistat canonicum, admittatur libere hujusmodi praesentatus; sed si beneficium praedictum non vacaverit, illud domino regi, vel justitiariis suis intimet ordinarius, excusando se, quod, quia tale beneficium non vacat ad praesens, nequit regium mandatum adimplere;* . . .

[160] A collection of relevant passages in the acts is given in § 23, note 11.

[161] Cf. § 59, note 19.

[162] King's answer to complaint of the clergy (*circ.* 1245? Cole, *Documents* 354) art. 4: *De peccatis subditorum cognoscunt Prelati absque impedimento Regis, exceptis casibus in quibus consequi intendunt per hoc indirecte in foro ecclesiastico aliquid quod ad forum Regis et ad ejus pertinet jurisdiccionem. De perjurio et fidei violatione idem intelligatur* . . .

[163] Cf. letter of the monk Nicolaus of Rouen to Becket, 1164 (*Mat. for Hist. Becket. Rer. Brit. Scr.* No. 67, V, 146, 150): *In Anglia namque delinquentium culpae apud episcopos accusatorum non mulctantur injunctione poenitentiae, sed datione pecuniae* . . . *Item quod multas pecunias suscipiant episcopi propter peccata apud eos accusatorum, sacris canonibus non consentit; quia licet poena sacrilegii sit pecuniaria, tamen non semper episcopis, sed quibuscunque personis ad quos sacrilegii querimonia pertinet, juste persolvitur.* Complaint of the clergy at the provincial council of *London*, 1257 (Wilkins, *Concilia* I, 726) c 28: . . . *; si conveniantur coram loci ordinariis, statim porrigitur regia prohibitio,* . . . *Idem fit, si convicti de adulterio, vel alio crimine, puniantur pecunialiter, vel aliis in causis mere spiritualibus fuerint in expensis condemnati* . . . Letters of Peckham to the bishops of St. David's

3. In some respects the state conceded to the ecclesiastical courts a genuine punitive power with a right, in excess of the ordinary power to impose penance, of inflicting imprisonment or death.[164] The punishment of heretics supplies the chief case in point. Some other cases are on the border-line between power to impose penance and judicial punitive power.

In England the church during the period now under discussion exercised a quasi-judicial punitive power[165] especially in offences against morality, attacks on clerks, defamation, neglect in the maintenance of churches and churchyards, refusal to discharge church dues, simony, loan upon interest and breach of vow or oath.[166]

But here again ecclesiastical competence was in many ways circumscribed by the state. In many instances cognizance belonged indifferently to the lay and the spiritual court; or the same cause was triable under a different aspect, particularly as a suit for compensation, by the secular tribunal.[167]

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and Llandaff, 5th Aug. 1284 (*Rer. Brit. Scr.* No. 77; III, 794), touching abuses in the imposition of fines.

In the *Circumspecte Agatis* the right of the prelates to impose fines was recognized as the rule: *Circumspecte agatis . . . non puniendo eos (i.e. episcop. Norwicens. et clerum), si placitum tenuerint in curia Christianitatis de his que mere sunt spiritualia, videlicet de correccionibus, quas Prelati faciunt pro mortali peccato, videlicet fornicatione, adulterio et hujusmodi, pro quibus aliquando infligitur pena corporalis, aliquando pecuniaria, maxime si convictus sit de hujusmodi liber homo.* [Coke, *Inst.* II, 489, however, supposes that by the words *aliquando pecuniaria* only the admissibility of commutation for money was to be indicated.] In opposition hereto *Art. Cleri* c 2 lays down: *Si prelatus imponat penam pecuniariam alicui pro peccato, et repetat illam regia prohibicio locum habet; verumptamen si prelati imponant penitencias corporales, et sic puniti velint hujusmodi penitencias per pecuniam sponte redimere, non habet locum regia prohibicio, si coram prelatis pecunia ab eis exigatur.* Similar provisions for the special cases *violenta manuum injectio in clericum* and *diffamacio* are found in the *Circumspecte Agatis* and repeated in *Art. Cleri* cc 3 and 4. Only where ecclesiastical jurisdiction in civil matters (*decimae, mortuaria, pensiones*) was to be granted, was the church court in the *Art. Cleri* declared competent, *etiam si propter detencionem istorum diuturnam ad estimacionem earundem pecuniariam veniatur* (cc 1 and 2).

[164] The spiritual court did not, indeed, formally sentence to death; but ordered the heretic (in relapse etc.) to be delivered to the secular arm. Yet this was in reality tantamount to punishing with death, since execution, in pursuance of the statute, followed directly from the judgment already pronounced. Cf., however, § 19, note 11.

[165] Cf. answer of the king to the complaint of the clergy (*circ.* 1245? Cole, *Documents* 356) art. 13: . . . *si peccata puniant Prelati pena spirituali, veluti jejuniis, elemosinis, fustigacionibus et consimilibus, neque per Regem neque per proceres impediuntur.*

[166] On the subjects to which ecclesiastical penal law relates according to papal authorities cf. Richter, *Kirchenrecht* § 222, note 1; or, at greater length, Hinschius, *Kirchenrecht* vol. V § 270.

[167] Answer of the king to the petitions of the clergy in 1280 and 1300 (in the petition of 1309, Wilkins, *Concilia* II, 319): *Respondet rex: Quod quando eadem causa diversis rationibus coram diversis judicibus ecclesiasticis et secularibus ventilatur, utpote de violenta manuum injectione in clericum; tunc, non obstante ecclesiastico judicio, curia regia idem negotium tractat, ut sibi expedire videtur; diverso tamen modo, sicut supra dicitur.* 9 *Ed. II*

To be noted here are the following details :—

1. *Heresy.*

The provisions regarding heresy are brought together in § 19.

2. *Offences against morality.*

The competence of the ecclesiastical courts in this respect had survived from Anglo-Saxon times. It was permanently recognized by the state.[168]

3. *Attack upon clerks, sacrilege.*

In the *Circumspecte Agatis* it is recognized as a thing previously [169] conceded, that the ecclesiastical courts could intervene in cases of sacrilege. But the temporal court might also call the offender to account for breach of the king's peace.[170] This view is confirmed in *Articuli Cleri*.[171] So in the thirteenth and fourteenth centuries the two courts remained equally competent.[172]

4. *Defamatio.*

Here again in the *Circumspecte Agatis* it is recognized as already conceded that cognizance belongs to the ecclesiastical court.[173] To the same effect is the

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st. 1 (1315/6) *Articuli Cleri* c 6: *Responsio. Quando eadem causa, diversis racionibus, coram Judicibus ecclesiasticis et secularibus ventilatur, ut supra patet de injeccione violenta manuum in clericum, dicunt quod non obstante ecclesiastico judicio, Curia Regis ipsum tractat negocium ut sibi expedire videtur, . . .*

[168] 13 *Ed. I* (1285) *Circumspecte Agatis* (above, note 163): *fornicatio, adulterium et hujusmodi.* Mandate of Edward I, 18th March, 1297 (*Lib. Custumarum; Rer. Brit. Scr.* No. 12; II, 213 [above, note 43]. Cf., however, *l.c.* II, 831 Glossary *s.v.q.e. Tonellum*). Extended punitive power against clerks in such cases is given by 1 *Hen. VII* (1485) c 2 (above, note 29).

[169] From earlier times cf. Bigelow, *Placita Anglo-Normannica*, 127 (exact date uncertain; reign of Henry I): *Henricus rex Angliae, Ricardo episcopo de Lundonia salutem. Mando tibi ut facias plenum rectum abbati Westmonasterii, de hominibus qui fregerunt ecclesiam suam de Wintonia noctu et armis. Et nisi feceris, barones mei de Scaccario faciant fieri, ne audiam clamorem inde pro penuria recti.* Compromise of Henry II with legate Hugo, 1176 (printed § 4, note 54) c 3.

[170] *Circ. Agat.*, first part: *. . . de violenta manuum injeccione in clericum, et in causa diffamacionis, concessum fuit alias quod placita inde teneantur in Curia Christianitatis, dummodo non petatur pecunia, sed agatur ad correccionem peccati.* Second part: *si quis manus violentes iniecerit in clericum, pro pace Domini Regis debent emende fieri coram Rege; pro excommunicacione vero coram Episcopo, et si imponatur pena corporalis, quam si reus velit redimere dando prelato vel leso pecuniam potest, nec in talibus locus est prohibicioni. In diffamacionibus libere corrigant Prelati regia prohibicione non obstante, licet porrigatur.*

Cf. *Fleta*, Book I c 29 *De Abjurationibus.* § 7: *Committentes autem Sacrilegium per Ecclesiam tueri non debent, sed per Clerum judicandi et degradandi; . . .* (see also Book I c 32 § 34, above, note 33).

[171] *Art. Cleri* c 3: *Insuper si aliquis violentas manus injecerit in clericum, pro violata pace debet emenda fieri coram Rege, pro excommunicacione vero coram prelato, ut imponatur penitencia corporalis; quam si reus velit sponte per pecuniam redimere dandam prelato vel leso, potest repeti coram prelato, nec in talibus regia prohibicio locum habet.* c 4: *In diffamacionibus eciam corrigant prelati supradicto modo, regia prohibicione non obstante.*

[172] Reeves, *Hist. of Engl. Law* c 25; 3rd Ed. IV, 102.

[173] Cf. above, note 170. On earlier attempts to deprive the ecclesiastical courts of competence in this respect see above, note 79.

pertinent clause in *Articuli Cleri*.[174] None the less, the secular courts endeavoured to restrict the competence of the ecclesiastical to cases of defamation which had reference to circumstances themselves cognizable by the latter.[175] Furthermore, it was forbidden that action in court Christian for defamation should be directed against those who had made injurious statements against lay or clerical persons in the course of a temporal inquest.[176] In so far as the defamation has caused loss, it could also be the subject of an action for compensation in the secular court.

5. *Neglect in maintaining church fabrics and churchyards.*

The competence of the ecclesiastical courts is recognized in the *Circumspecte Agatis*.[177]

6. *Refusal to discharge church dues.*

The competence of the ecclesiastical courts in penal procedure was herein just as wide as their competence in civil procedure (see above, competence of ecclesiastical courts in civil causes, Nos. 6 and 7).[178]

7. *Simony.*

The kings endeavoured temporarily to exclude, in the thirteenth century, the competence of the ecclesiastical courts in this sphere also.[179] But the right of the church to intervene continued to be in general acknowledged.[180]

8. *Loan upon interest (=usura).*

The church proceeded penally against lenders upon interest (without regard

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[174] Cf. above, note 171.—But see complaint of the clergy at the provincial council of *London*, 1399 (Wilkins, *Concilia* III, 240) c 48 (printed below, note 194).

[175] In the last part of a collection of *Brevia de cursu* (MS. Cambridge Kk., V, 33), compiled probably about 1237–59, the last part of which contains the writs then newly added, is found (under No. 109 of the collection) a prohibition to ecclesiastical judges against entertaining a cause in which B (who has been convicted of disseising A) complains that A has 'defamed his person and estate' (Maitland, *The History of the Register of Original Writs* in *Harvard Law Review* III, 174, November, 1889). Cf. the judgments 2 *Hen. IV*, 15 and 18 *Ed. IV*, 6, cited in Reeves, *Hist. of English Law* c 25; 3rd Ed. IV, 101.

See also *Report of the Eccles. Courts Commission*, 1833: *Causes of Defamation may be defined to be Suits, instituted by persons whose good fame is alleged to have been injured by some individual uttering words respecting them, importing that they have been guilty of incontinency.*

[176] 1 *Ed. III* (1326/7) st. 2 c 11: *Auxint plusours gentz sont grevement pleyntz qe quant diverses gentz, auxibien Clerks come lays, ounte este enditez devant viscontes en lour tours, et puis par enqueste procure sont deliverez devant Justices, et apres lor deliverance suient en Court Crestiene devers les enditours, par quoi plusours gentz des Countees se doutent plus denditer les malveys; Le Roi voet qe en tieux cas chescun qe se sent greve, eyt sur ce prohibicion en Chauncellerie fourme en son cas.*

[177] *Circ. Agat.: si Prelatus pro Cimiterio non clauso, ecclesia discooperta vel non decenter ornata . . . penam imponat.*

[178] Especially as to the payment of Peter pence cf. *Leges Guil. I* (Schmid, *Ges. d. Angelsachsen*) I c 17 § 2: *Qui vero denarium Sancti Petri detinet, cogetur censura ecclesiastica illum solvere, et insuper* 30 *denarios pro foris facto.* § 3: *Quod si ante justitias regis placitum venerit, habebit rex XI sol. pro forisfactura, et episcopus* 30 *denarios. Leg. Ed. Conf.* (law-book; probably beginning of 12th cent.) c 10 § 2: *Si quis vero eam detinuerit, ad justitiam regis clamor deferatur, quoniam ille denarius eleemosina regis est, et justitia regis reddere faciat denarium et forisfacturam regis et episcopi.*

[179] Cf. above, note 79.

[180] Bracton III, 146 (above, note 143).

to the rate of interest). From the middle of the twelfth to the middle of the thirteenth century we find the state issuing prohibitions against the exercise of this form of jurisdiction by the church.[181] Afterwards the latter was allowed to have its way.

The state, on its part, declared Christian lenders upon interest incapable of making wills, and on their death, whether they had executed such deeds or not, confiscated their property. At the same time, during the life of the lender, he was liable to prosecution before the temporal courts. Penalties against the lender were exile, incarceration, forfeiture of property, the punishment of theft. According however to what we learn from the *Dialogus de Scaccario* and Glanvilla, the state was wont (at the time to which these authorities refer) to confine itself after the death of the lender to confiscation of his movable property, and not to proceed against such persons during their lifetime.[182]

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[181] In 1163 Henry II caused the (continental) bishop of Poitiers to be prohibited, *ne super accusatione foenoris quemquem audiret.* (Letter of the bishop of Poitiers to Thomas Becket. *Mat. for Hist. Becket; Rer. Brit. Scr.* No. 67; V, 38.) Complaint of the clergy, 1237 (above, note 79).

[182] On the (secular) law in the 12th and 13th centuries cf. especially: instance in 1116 of a charge of detaining of treasure-trove (*latrocinium et usura*), and trial before a secular court, Bigelow, *Placita Anglo-Normannica*, 111. *Leg. Ed Conf.* (law-book; probably beginning of 12th cent.; Schmid, appendix XXII) *Codex Harleianus* c 37: *Usurarios etiam defendit Edwardus, ne esset aliquis in regno suo. Et si aliquis inde probatus esset, omnes possessiones suas perderet, et pro exlege haberetur. Hoc autem dicebat, saepe se audisse in curia Regis Francorum, . . . Dialogus de Scaccario* (between 1177 and 1188), Book II c 10: *Item cum quis laicum fundum habens, vel civis etiam, publicis inservit usuriis* (whether otherwise, according to *Dialogus de S.*, the law was not clear); *si hic intestatus decesserit, vel etiam his quos defraudavit non satisfaciens, testamentum de prave acquisitis visus est condidisse, sed eadem non distribuit, immo penes se reservavit; . . . pecunia ejus et omnia mobilia mox infiscantur; . . . ; haeres autem jam defuncti fundo paterno et ejus immobilibus sibi vix relictis gaudeat. . . . Ex eo . . . quod clericus usuris inserviens dignitatis suae privilegium demeretur, parem laico sic delinquenti poenam sibi mereatur, ut ipso videlicet de medio sublato omnia ejus mobilia fisco debeantur. Ceterum sic a prudentibus accepimus. In sic delinquentem clericum vel laicum Christianum regia potestas actionem non habet, dum vita comes fuerit: superest enim poenitentiae tempus; sed magis ecclesiastico judicio reservatur, pro sui status qualitate condemnandus: cum autem fati munus expleverit, sua omnia, ecclesia non reclamante, regi cedunt: nisi, sicut dictum est, vita comite digne poenituerit, et testamento condito quae legare decreverit a se prorsus alienaverit . . .* Glanvilla (*circ.* 1180–90), Book VII c 16: . . . *Usurarii . . . omnes res (sive testatus sive intestatus decesserit) domini Regis sunt. Vivus autem non solet aliquis de crimine Usurae appellari nec convinci: sed inter caeteras regias inquisitiones solet inquiri et probari aliquem in tali crimine decessisse, per duodecim legales homines de vicineto et per eorum sacramentum. Quo probato in Curia, omnes res mobiles et omnia catalla, quae fuerunt ipsius usurarii mortui, ad usus domini Regis capientur, . . .* Book X c 3: . . . *Cum quis itaque aliquid tale (quod consistit in numero vel pondere vel mensura) crediderit, si plus eo receperit, Usuram facit* (cf. also c 8); *et si in tali crimine obierit, damnabitur tanquam usurarius per legem terrae, unde superius dictum est plenius . . .* Ordinance of Richard I between 1194 and 1199 (mentioned in *Itinerarium Ricardi; Rer. Brit. Scr.* No. 38; I, 449): . . . *Item ne quis Christianorum deprehenderetur foenerator, nec amplius quam commodaverat quacunque conventionis occasione reciperet; quod si forte redditum vel terras quis in pignus suscepisset, vel quidlibet aliud ab altero unde annuum proveniret emolumentum, recepta tamen sorte, obligata possessio pristinum rediret ad dominum non obstante cujuscunque termini quasi nondum finiti pactione. Si quis autem contra haec statuta con-*

A statute of 1341 recognized that it belonged to the church to prosecute lenders upon interest in their lifetime, to the state to confiscate their property after death.[183] This act, with others of the same parliament, was repealed the following year,[184] and it seems that prosecution of lenders upon interest in their lifetime remained open both to state and church.

Penal proceedings during the life of the offender were expressly encouraged by an act of Henry VII's reign; in it reservation was made to the spiritual authorities of their lawful punishments.[185]

9. *Perjury and breach of promise* (*perjurium* and *fides laesa*).

In the first century after the Norman conquest civil prosecution for perjury is only mentioned in cases of violation (against which feudal law provided) of

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vinceretur venisse, per annum et diem carcerali plecteretur penuria, regiae postmodum obnoxius misericordiae. Enumeration of the subjects with which the itinerant judges in 1194 should deal (Hoveden; *Rer. Brit. Scr.* No. 51; III, 264) c 15: *Item de foeneratoribus, et eorum catallis, qui mortui sunt.* In 1198 (*l.c.* IV, 62) c 12: *De usuris Christianorum, et eorum catallis qui sunt mortui.* Similarly, the instruction to the itinerant judges in Bracton (*Rer. Brit. Scr.* No. 70) II, 244. [Cf. *Magna Carta* v. 1215 c 10 (append. VII), 20 *Hen. III* (1235/6) *Stat. Merton* c 5 (append. VII, note 9).] *Rot. Parl.* 51 *Hen. III* (cited by Coke, *Instit.* III c 70), *Petitiones Cleri: Ad* 16 *Artic. de usuris respondetur: Quod licet Episcopis pro peccato illo poenitentiam usurario injungere salutarem. Sed quia committendo usuram, usurarius furtum committit, et super hoc est convictus, catalla et tenementa usurarii, sicut catalla furis sunt regis, et si qui sequi voluerint contra hujusmodi usurarium, restituantur eis bona sua, quae ipsi usurarii per usuram extorserunt. Fleta*, lib. II c 1 § 19: *Item, atrox injuria est quae omnium mobilium amissionem confert, et Legem liberam aufert, et quae locum habet in Usurariis Christianis, et de perjurio convictis, . . .* lib. I c 20 *De Capitulis Coronae et Itineris* § 28: *De Usurariis Christianis, qui fuerint; et si qui mortui fuerint, qui Catalla eorum habuerint, et quantum. Mirrour aux Justices* c 1 s 16 *De Viewes de Franck-pledge: Les articles sont ceux: . . . De Christians usurers; et de touts lour biens.*

[183] 15 *Ed. III* (1341) st. 1 c 5: *Item accorde et assentuz est qe le Roi et ses heires eient la conisaunce des usereres mortz et qe les Ordinares de seinte esglise eient la conisaunce des usereres vifs, desicome a eux attient, faire compulsioun par censures de seint esglise pur le pecche, de faire restitucion des usures prises contre la lei de seinte esglise.* Temporal penalties during lifetime against lenders upon interest are threatened by ordinance of Edward III, 7th March, 1364 and the proclamation, based thereon, of the town of London (*Lib. Albus; Rer. Brit. Scr.* No. 12; I, 368 ff.).

[184] 15 *Ed. III* st. 1 was revoked by the king (15 *Ed. III* st. 2): *volentes tamen quod articuli in dicto statuto . . . contenti, qui per alia statuta nostra vel progenitorum nostrorum Regum Angliae sunt prius approbati, iuxta formam dictorum statutorum . . . observentur.*

[185] 3 *Hen. VII* (1487) c 6 fixes for loans upon interest disguised under form of sale, bargain etc. a penalty of £100, to be imposed by chancellor or justice of peace, *reservant all Esglise, cest punissement nient contristeant* (temporal punishment notwithstanding), *la correccion de lour almes a les leies dicell accordant* (cf. also c 7). 11 *Hen. VII* (1495) c 8 repeals the act, just mentioned, as obscure. In case of lending at interest, or selling goods to persons being in necessity and buying the same again within three months for less money, or lending money on receiving profit from lands etc., if complaint be made in the king's court, one half the sum lent shall be forfeited, whereof one half goes to the king, one half to the person suing, or if none sue, the whole to the king. Suit may be by information in any of the king's courts of record. The act ends: *Reservyng alwey to the spirituall jurisdiccion their lawefull punysshmentis in every case of Usurie.*

the feudal vow and of the oath which *juratores*[186] had to take.[187] Probably the ecclesiastical authorities also exercised the right of imposing penance whenever oath or promise was broken. In accordance with their general principles they, presumably, at the same time used their influence to bring about a fulfilment of the broken pledge. Civil jurisdiction in the cases here contemplated was forbidden to the church in the constitutions of Clarendon.[188] But the distinction between civil action and penal prosecution—on which Glanvilla laid stress[189]—was not strictly observed either by state or church. On the one hand, the

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[186] *Juratores* had an intermediate position between witnesses and jurymen in the modern sense.

[187] Laws of William I (preface p. ci to Hoveden, *Rer. Brit. Scr.* No. 51, vol. II) c 6: . . . *si Francigena appellaverit Anglum de perjurio* . . . *Anglus se defendat per quod melius voluerit, aut judicio ferri, aut duello.* . . . An instance of proceedings before a civil court against perjured *juratores* will be found in Bigelow, *Placita Anglo-Normannica.* London, 1879, p. 34. Cf. also Odericus Vitalis (Ed. of Le Prevost) IV, 239: *Anno ab Incarnatione Domini* 1107 *Henricus rex proceres suos convocavit, et Rodbertum de Monteforti placitis de violata fide propulsavit. Unde idem, quia reum se sensit, licentiam eundi Jerusalem accepit, totamque terram suam regi reliquit.*

Leges Henrici I (law-book; probably 1110–18). c 53 § 4: *Si dominus de felonia vel fide mentita compellat* (=brings before the court) *hominem suum,* . . . *Assisa de Essoniatoribus* (preface p. cv to Hoveden, *l.c.* vol. II): . . . *si essoniatores voluerint invenire vadium et plegium quod ad diem habebunt warantum suum, et si non habuerint, deinde capiantur ut perjuri.*

According to Glanvilla (*circ.* 1180–90) Book II c 19 there were civil penalties for perjury of *juratores* in the *assisa.* For full particulars of procedure and penalties in such cases see Bracton, Book IV, tract. 5 cc 4, 5 (IV, 388 ff.); *Fleta,* Book V c 16; Britton, Book IV c 9. Cf. also *Fleta,* Book II c 1 § 19: *Item, atrox injuria est quae omnium mobilium amissionem confert, et Legem liberam aufert, et quae locum habet in Usurariis Christianis, et de perjurio convictis.* . . . According to *Fleta,* Book V c 16 § 4 and Britton, Book IV c 9 § 3 only the violation of an assertory (having reference to the past or the present) oath, not that of a promissory, is penal. The oath of a juryman belongs thus to the former class. In the *Mirrour aux Justices* c 1 s 4 and c 4 s 19 the idea of perjury is extraordinarily wide; in it is included every violation of an oath of fealty or breach of official duty; cf. *e.g.* (Ed. Honard IV, 497): *En perjury chéent vers le Roy* . . . *touts ceux subjects le Roy qui le maudissent ou escomengent.*

[188] c 15: *Placita de debitis, quae fide interposita debentur, vel absque interpositione fidei, sint in justitia regis.* Becket and Alexander III seem to have assumed that in the constitutions of Clarendon the exercise of the corresponding penal jurisdiction was also forbidden; it is not apparent that they could have had in view any other provision than that quoted. Becket at Vezelay condemned (1166) as contained in the constitutions, among other things, the rule: *Quod non liceat episcopo coercere aliquem de perjurio vel fide laesa.* (Report of Becket to Alexander III, *Materials for History Becket; Rer. Brit. Scr.* No. 67; V, 387.) Alexander III writes 1165-6 to Henry II: . . . *negotia ecclesiastica, et praesertim criminalia, quae de laesione fidei vel juramenti emergunt, causas quoque super rebus et possessionibus ecclesiarum, personis ecclesiasticis tractanda relinquere* . . . *non adeo serenitatem tuam deceret quam etiam expediret.* (*Materials, l.c.* VI, 554.)

[189] Glanvilla, Book X c 12: *Die autem statuta debitore apparente in Curia, creditor ipse si non habeat inde vadium neque plegios neque aliam diracionationem nisi solam fidem, nulla est haec probatio in Curia domini Regis. Veruntamen de fidei lesione vel transgressione inde agi poterit in Curia Christianitatis. Sed Judex ipse ecclesiasticus, licet super crimine tali possit cognoscere et convicto penitentiam vel satisfactionem injungere, placita tamen de debitis laicorum vel de tenementis in Curia Christianitatis per Assisam regni, ratione fidei interpositae, tractare vel terminare non potest.* . . .

ecclesiastical courts continued for some time longer to make a general claim without closer distinction to actions *de perjurio et fide laesa*; on the other hand, Henry III, and at first perhaps Edward I also, prohibited them from dealing with all such matters.[190] Whether the *Circumspecte Agatis* contained a provision upon the question is doubtful.[191] At any rate towards the end of the thirteenth century it seems to have been acknowledged that the ecclesiastical courts, if they confined themselves to the imposition of admissible penances, could punish in all cases of perjury or breach of faith. This was upheld by rulings of the courts in the reigns of Edward III[192] and Henry VI.[193] Side by side therewith examples are found of judgments of the period from Henry IV to Edward IV in which the older confusion recurs, the secular courts forbidding to the ecclesiastical all action in respect of perjury or breach of faith in case the suit touching the obligation confirmed by the oath was one within the cognizance of a secular court.[194] From the end of the reign of Edward IV the opinion prevailed among the secular judges that the church courts could indeed punish for perjury or breach of faith, if the main issue belonged to the competence of the secular court, but only *ex officio*, not at the instance of the party concerned.[195] The underlying idea probably was that the party, as a rule, would only prosecute if by so doing the fulfilment of the contract could be compelled.[196] Thus by a circuitous process a return had been made to the old distinction, that if it was only a question of imposing a penance, the ecclesiastical court was competent in *all* cases of perjury or breach of faith.

Under Henry VII statutory measures were issued to direct civil proceedings against persons (especially jurymen) who had broken the oath they had taken in a civil court.[197]

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[190] Cf. above, note 79. See also complaint of the clergy at the provincial council of *London*, 1257 (Wilkins, *Concilia* I, 726) c 27: . . . ; *si inter laicos in contractibus interveniat fidei datio, vel infringat jusjurandum quis juramentum vel fidem, et judex (sc. ecclesiasticus) velit cognoscere de tali peccato mortali (saltem ad poenitentiam injungendam) porrigitur regia prohibitio; et salus animarum impeditur in damnationem plurimorum, ea occasione, quod ratione catallorum praestitum fuerat jusjurandum.*

[191] In some MSS. the words *et similiter de fidei laesione* are wanting; and so in the text adopted in *Statutes of the Realm*. Cf. *St. of R.* I, 101, note 9. If the words stood in the ordinance, they laid down that the ecclesiastical courts might try such causes *dummodo non petatur pecunia, sed agatur ad correctionem peccati*. With this would agree the royal answer, printed above, note 162.

[192] 22 *Ass.* 70; *Fitz. Prohib.* 2, cited in Reeves, *Hist. of Engl. Law*, Ed. 1869, III, 104.

[193] 34 *Hen. VI*, 70 cited in Reeves, *l.c.*

[194] Reeves *l.c.* cites the following instances: (1) 2 *Hen. IV*, 15. *Bro. Praem*, 16; (2) 11 *Hen. IV*, 83 (88?); (3) 38 *Hen. VI*, 29; (4) 20 *Ed. IV*, 10; 22 *Ed. IV*, 20. —Cf. complaint of the clergy at the provincial council of *London*, 1399 (Wilkins, *Concilia* III, 240) c 48: *Item in causis perjurii et defamationis quum in foro ecclesiastico agitur duntaxat ad poenam canonicam imponendam si generalis prohibitio regia judici porrigitur, quamvis judex ille constare faciat sub sigillo suo in cancellaria regis de hujusmodi causa, et quod procedatur tantummodo ad poenam canonicam ea occasione infligendam, consultatio regia* (cf. § 27, note 10, *sub finem*) *denegatur. Unde perjurium incurrentibus et defamantibus grave imminet periculum morum, cum perjurium et defamatio hujusmodi sic perpetuo maneant impunita. Quare supplicant . . . ut rex dignetur gratiose concedere, quod in hiis casibus poterit consultatio emanare.*

[195] According to Reeves, *l.c.* this view was first expressed towards the end of the reign of Edward IV by judges Brian and Littleton, and afterwards approved in the judgment 12 *Hen. VII*, 22.

[196] Reeves, *l.c.*

[197] 11 *Hen. VII* (1495) c 21 *An Act agaynst Perjurye*. Relates to proceedings

§ 61.

c. From the reformation to the present day.

1. Participation of ecclesiastical persons in temporal courts.

During the previous period the popular courts or folk-moots had been, with but few traces left, displaced by the royal courts. Hence the participation of the clergy as such in the temporal court, a participation due to the old constitution of the folk-moot, ceased. On the other hand, the clergy were not as such excluded from participation in the royal court. Thus, for example, many instances occur of clerks filling the position of justices of the peace.

In some acts of the reformation period, for certain cases of offence against a prescribed doctrine the possibility of constituting mixed courts was contemplated.[1] But such provisions did not obtain permanent significance.

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against jurymen in the city of London, who violating their oaths give a wrong verdict. c 24 *An Act for Writtes of Attaynt to be brought agaynst Jurors for untrue Verdictes.* As the preceding, but without limitation to London. Valid until the next parliament. c 25 *An Act agaynst Perjury unlawfull mayntenaunce and corrupcion in officers.* ss 2 ff. relate to perjury on occasion of inquest before a justice of peace; s 6 concerns the case, *if perjury bee commytted by proves in the Kinges Courte of the Chauncery or before the Kinges honorable Councell or els where.* Valid until the next parliament.

In these three acts ecclesiastical jurisdiction is not mentioned.

[1] 34 & 35 *Hen. VIII* (1542/3) c 1 ss 2 and 17: Any person who maintains etc. what is contrary to the doctrine set forth since 1540 shall be condemned by the bishop and two justices of the peace, or by two members of the king's council, or by commissioners appointed by the king. By 1 *Ed. VI* (1547) c 1 the spiritual representative is only called upon for advice; ss 1, 2: actions for speaking irreverently of the sacrament of the altar are to be heard before justices of the peace; s 5: the justices shall direct to the bishop the following writ: *Rex . . . Episcopo L. salutem. Praecipimus tibi quod tu Cancellarius tuus vel alius deputatus tuus sufficienter eruditus sitis cum Justiciariis nostris ad pacem in Comitatu nostro B. conservandam assignatis apud D. tali die ad sessionem nostram ad tunc et ibidem tenendam ad dandum consilium et advisamentum eisdem Justiciariis nostris ad pacem super arranamentum et deliberacionem offendencium contra formam statuti concernentis sacrosanctum Sacramentum Altaris.* 2 & 3 *Ed. VI* (1548) c 1 *Act of Uniformity;* s 4: offences against this act are to be investigated and determined by the *Justices of Oyer and Determyner* or the *Justices of Assise;* s 5: *provided . . . that everye Archebisshopp or Bisshopp shall or maye . . . joyne and associate him selfe . . . to the said Justices . . .* 1 *Eliz.* (1558/9) c 2 *Act of Uniformity;* s 4: The archbishops and bishops are to compel the observance of this act by ecclesiastical pains; s 5: The *Justices of Oyer and Determiner* and the *Justices of Assise* shall likewise take measures to prevent transgression; s 6: *. . . all and every Archebishope and Bishope shall or maie at all time and times at his libertie and pleasure, joyne and associate himself by vertue of this Acte to the said Justices of Oier and Determiner, or to the said Justices of Assise at every the said open and generall Sessions to be holden in any place within his Diocese for and to thinquirie hearing and determining of the offences aforesaid.* Cf. also 14 *Eliz.* (1572) c 5 s 32: The bishops (or their chancellors) shall visit the hospitals whose founders are dead and for which special visitors have not been fixed; in case accounts of the receipts of the hospital are refused or the proper application of those receipts is not shown . . . , *every*

2. Ecclesiastical courts.

The reformation as such made no change in the competence of the ecclesiastical courts.[2] But slowly, even during the time when the reform was developing, that gradual limitation progressed which was beginning as early as Henry VII. At the opening of the first revolution the church was deprived of the right to inflict fines or imprisonment; but at the restoration recovered its former punitive powers.[3] Yet the diminution little by little of the sphere of competence of the ecclesiastical courts still continued; nor was the process arrested until the middle of the nineteenth century, when it came to a temporary standstill.

a. Competence in respect of persons.

The legislation of the reformation period in this respect was connected with the restrictions on the ecclesiastical courts partly already permanently introduced under Henry VII, partly tentatively laid down in the first years of Henry VIII by the act—limited as to the time of its validity—4 *Hen. VIII* (1512) c 2.[4]

23 *Hen. VIII* (1531/2) c 1, at first likewise only in force for a few years, deprived clerks under the degree of subdeacon of benefit of clergy even in a first case of petty treason, murder or of robbery or arson under aggravated circumstances. Clerks in higher orders were to be delivered up to the bishop, but might be by him degraded and surrendered to the secular court for judgment. 28 *Hen. VIII* (1536) c 1 prolonged the validity of this last act and extended the effect of its provisions as to clerks in minor orders to clerks of all higher degrees. By 32 *Hen. VIII* (1540) c 3 the two preceding

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suche person . . . shall forfayte and lose suche summe . . . of Money as to the said Bysshoppe or Chauncelour and two Justices of the Peace . . . shalbe thought meete and convenient, . . . Similarly, according to s 37, in the case of other charitable foundations.

[2] 1 *Ed. VI* (1547) c 2 ss 3–7 (see § 6, note 42) laid down that the ecclesiastical courts in contentious civil or criminal causes should thenceforward give judgment in the king's name, whilst other (specified) faculties etc. of ecclesiastical authorities should run as before in the names of the bishops. This act was repealed by 1 *Mar.* st. 2 (1553) c 2 s 1. Cf. also 1 & 2 *Phil. & Mar.* (1554 & 1554/5) c 8 s 24.—1 *Mar.* st. 2 c 2 was repealed by 1 *Jac. I* (1603/4) c 12 s 8. When under Charles I doubts were raised whether the provisions of 1 *Ed. VI* c 2 were thus revived, the star chamber took the judges' opinion. That opinion was given (1637) to the effect that the statute was not in force and that process might issue out of the ecclesiastical courts in the names of the bishops. The opinion is printed Cardwell, *Doc. Ann.* II, 212.

[3] Cf. § 7, notes 36 and 39.

[4] On these earlier acts see § 60, notes 69–71.—The attitude of Henry VIII towards this question is shown by his letter (1533) to bishop Tunstall of Durham (Wilkins, *Concilia* I, 762): *And as for the living of the clergy, some notable offences we reserve to our correction, some we remit by our sufferance to the judges of the clergy; as murther, felony, and treason, and such like enormities we reserve to our examination; other crimes we leave to be ordered by the clergy, not because we may not intermeddle with them, for there is no doubt but as well might we punish adultery and insolence in priests, as emperors have done, and other princes at this day do*, . . .

statutes were made perpetual, and it was also enacted (as had been the case in 4 *Hen. VII* c 13 for the lower clergy) that in any conviction for felony persons admitted to their clergy should be branded in the hand, and should on a second offence not be again surrendered. Other less important laws added certain cases in which benefit of clergy was likewise taken away, and amended the main enactments in regard to verbal defects.[5]

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[5] The following acts of Henry VIII's reign from the beginning of the reformation are relevant here:—

22 *Hen. VIII* (1530/1) c 9 *An Acte for poysoning.* In a particular case of poisoning the culprit is deprived of his clergy. Henceforward wilful poisoning shall be adjudged high treason, and benefit of clergy shall not be allowed to any person convicted of it. [This enactment is repealed by 1 *Ed. VI* c 12 s 1, whereby treason is only to be what is so under 25 *Ed. III* st. 5 c 2; the act of Ed. VI, however, in ss 9 and 12 maintains the withdrawal of benefit of clergy in cases of poisoning.]

23 *Hen. VIII* (1531/2) c 1 *An Acte that no person commyttyng Pety Treason Murder or Felony shalbe admytted to his Clergye under Subdeacon.* The statute refers to the fact that the bishops have not discharged their obligation under 4 *Hen. IV* c 3 (cf. on this point § 60, note 44). s 1: Clergy is taken from all persons (whether the actual perpetrators or their abettors) *founde gyltye after the lawes of this londe for any maner of pety treason, or for any wylfull murder of malyce prepensed, or for robbyng of any Churches Chapells or other holy places, or for robbyng of any . . . persons in theyr dwellyng howses . . . or in . . . the highe wayes, or for wyllfull burnyng of any dwellyng houses or bernes . . .* ss 2 ff.: Not applicable to persons within the orders of subdeacons or above. These must remain 'in perpetual prison' under the keeping of the ordinary unless they become bound with sufficient sureties for their good behaviour. An ordinary may degrade a convict person and send him to the king's bench.

23 *Hen. VIII* (1531/2) c 11 *An Acte for breking of prison by Clerkes convicte.* s 1: Clerks convicted of murder or felony and surrendered to the bishop frequently break prison; this offence is for the future to be felony, and to be subject to *such peyne of dethe and penaltie and losse of landes and goodes* as for other felonies is accustomed. Benefit is not allowed. s 2: those in 'holy orders' (subdeacon's or higher) on conviction are to be delivered to the ordinary, *there to remayne without any purgacion.* s 3: the ordinary may degrade convicted clerks and send them to the king's bench.

25 *Hen. VIII* (1533/4) c 3 *An Acte for stondyng muet and peremptorilie challenge.* The provisions of 23 *Hen. VIII* c 1 shall be applicable even if the person indicted of murder etc. upon his arraignment shall stand mute or challenge above twenty persons or will not answer directly; also, if goods were stolen in another county than that in which the arraignment is.

25 *Hen. VIII* (1533/4) c 6 *An Acte for the punysshement of the vice of Buggerie.* Sodomy a felony without benefit of clergy. The act is only valid until the end of the next parliament (cf. 28 *Hen. VIII* c 1 and 32 *Hen. VIII* c 3. 25 *Hen. VIII* c 6 was repealed by the provision in 1 *Mar.* st. 1 c 1 s 3; it was revived in the form in which it held good at the end of the reign of Henry VIII and made perpetual by 5 *Eliz.* c 17).

23 *Hen. VIII* (1536) c 1 *An Acte that Felons abjuryng for Pety Treason murder or felony shall not be admytted to the benefyte of their Clergye.* The validity of 22 *Hen. VIII* c 14 (touching abjurations and sanctuaries), 23 *Hen. VIII* c 1, 25 *Hen. VIII* c 3, 25 *Hen. VIII* c 6 is prolonged to the last day of the next parliament (s 1); the provisions of these acts are to be applicable to persons within 'holy orders' as well as to those in lower orders (s 2).

31 *Hen. VIII* (1539) c 14, Six article law (repealed by 1 *Ed. VI* c 12 s 2) takes away clergy for offences against itself (ss 1–3, 20).

32 *Hen. VIII* (1540) c 3 *For the continuacion of Actes.* s 1: 22 *Hen. VIII* c

These enactments, with immaterial alterations, remained in force during all the vicissitudes of the reformation period and were, as to the major part, expressly repeated in statutes not only of Edward VI's reign, but also of Mary's. Only as to actions against peers were certain reservations made.[6]

14, 23 *Hen. VIII* c 1, 25 *Hen. VIII* c 3, 25 *Hen. VIII* c 6, 28 *Hen. VIII* c 1, with extension to those in 'holy' orders, are made perpetual. s 2: . . . *enacted . . . that suche persones as ben or shalbe within holy orders, whiche by the lawes of this Realme ought or may have their clergie for any felonyes, and shalbe admitted to the same, shalbe brent in the hande, in like maner and fourme as lay clerkis ben accustumed in suche cases; and shall suffre and incurre afterwarde* (*i.e.* in case of relapse) *all suche paynes daungiers and forfactures as be ordered and used for their offences of felony, to all intentis . . . as lay personnes admitted to their clergie be or ought to be ordered and used by the lawes and statutes of this realme.*

33 *Hen. VIII* (1541/2) c 8 *The Bill ayenst conjuracions and wichecraftes and sorcery and enchantments.* Conjuration, witchcraft etc. for injurious purposes is punishable as felony without benefit of clergy or sanctuary.

33 *Hen. VIII* (1541/2) c 14. Similarly false prophecy.

37 *Hen. VIII* (1545) c 10. Similarly diffusing written, unsigned charges of high treason. (The three last mentioned acts are repealed by 1 *Ed. VI* [1547] c 12 s 3.)

[6] From the reigns of Edward VI and Mary the following are in point:—

1 *Ed. VI* (1547) c 12 *An Acte for the Repeale of certaine Statutes concerninge Treasons, Felonyes etc.* s 9: No *benefit* or sanctuary shall be allowed in case of *murder of malyce prepensed . . . poisoning of malyce prepensed . . . breaking of howse by day or night . . . and . . . person . . . therby putt in feare or dreade . . . robbing of any person in or near highway . . . felonyous stealing of horses, geldinges or mares . . . felonyous taking goods out of church etc.* . . . and that apart from the form of trial or pleading of the accused (*attainted or convicted*, or *being indyted or appealed, thereupon found guilty by verditte of* 12 *men*, or *confess upon arraynment*, or *will not answer directly according laws*, or *stande wilfullie or of malyce muett*). On the other hand there shall be benefit and sanctuary in all other cases of felony just as before 24th April, 1 *Hen. VIII.* s 13: In all cases in which *benefit* is granted and in all cases in which it is by this act taken away, excepting *willfull murder and poysoninge of malyce prepensed*, a peer shall under this act *of common grace uppon his or their request or prayer alleging that he is a Lorde or Pier . . . and clayming the benefitt of this Acte, thoughe he can not reade, without anny burnynge in the hande Losse or Inheritaunce or corruption of his bloude, be juged . . . for the first time onelie . . . as a Clerke convicte, and shalbe in cace of a Clercke convicte which maye make purgacion; . .* [Cf. also ss 14, 15.]

2 & 3 *Ed. VI* (1548) c 29. Sodomy felony without benefit or sanctuary.

2 & 3 *Ed. VI* (1548) c 33 explains 1 *Ed. VI* c 12 s 9 to mean that benefit is also lost in cases of stealing of *one* horse.

3 & 4 *Ed. VI* (1549/50) c 5 *An Acte for the punyshment of Unlawfull Assemblyes and rysinge of the Kinges Subjectes* (of limited duration, prolonged to the end of the next parliament by 7 *Ed. VI* c 11) declares various specified acts to be felony without benefit.

5 & 6 *Ed. VI* (1551/2) c 9 explains 23 *Hen. VIII* c 1 as to the meaning of 'robbing any person or persons in their dwelling houses, the owner etc. being therein.' 1 *Ed. VI* c 12 is not mentioned.

5 & 6 *Ed. VI* (1551/2) c 10. 25 *Hen. VIII* c 3, in so far as it prescribes that (other conditions fulfilled) benefit is lost when the arraignment is in a county other than that in which the offence was committed, has been virtually repealed by 1 *Ed. VI* c 12; it is in so far hereby revived.

Legislation in the first years after Elizabeth's accession was of the same tendency.[7]

Subsequently, 18 *Eliz.* (1575/6) c 7 abolished the special amenability of the clergy to their own courts; no man allowed his clergy was to be committed to the ordinary. *Beneficium cleri* remained, for the present, to the same extent as before; it had however no further effect on the amenability of the clerk to the secular court, only operating to mitigate the punishment;[8] in cases in which *beneficium* was to be granted, the utmost sentence was to one year's imprisonment.[9]

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2 & 3 *Phil. & Mar.* (1555) c 17 takes benefit from a certain accessory to murder before the act.

4 & 5 *Phil. & Mar.* (1557/8) c 4 *An Acte that Accessaries in Murder and divers Felonies shall not have the benefitte of Clergie.*

s 1: *Enacted . . . that all and every person . . . that . . . shall maliciouslie commande hire or councell any person or persons to commit or doo any Petie Treason wilfull Murder, or to doo any Robberie in any dwelling House or Howses, or to committ or doo any Robberie in or nere any Highe Waye in the Realme of Englande, or in any other the Quenes Dominions, or to committ or doo any Robberie in any Place within the Marches of Englande against Scotelande, or wilfully to burne any dwelling Howse or any parte therof, or any Barne then having Corne or Grayne in the same; that then everye such Offender or Offenders and every of them . . . shall not have the benefite of his or their Clergie.*

s 2: *Provided alwaies and be it enacted, That every Lorde and Lordes of the Parliament, and Piere and Pieres of the Realme having Place and Voice in the Parliament, upon every Inditement for any of thoffences aforesaid, shalbe tryed by their Piers as hathe bene accustomed by the Lawes of this Realme.*

[7] 5 *Eliz.* (1562/3) c 14 *An Act agaynst the forgyng of Evydences and Wrytinges.* s 6 declares such forgeries on a second offence to be felony without benefit.

5 *Eliz.* c 16 makes witchcraft and conjuration, under certain circumstances, felony without benefit.

5 *Eliz.* c 17 *An Act for the punishement of the Vyce of Sodomye* revives and makes perpetual 25 *Hen. VIII* c 6 as it stood at the king's death.

5 *Eliz.* c 20. According to s 2 any person feigning to be an Egyptian (gipsy) and consorting with such vagabonds for the space of one month shall be guilty of a felony, without benefit or sanctuary.

8 *Eliz.* (1566) c 4 *An Acte to take awaye the benefitte of Clargye from certen felonioune Offendors.* s 1: Owing to the number of cut-purses or pick-purses it is enacted *that no person or persons which hereafter shall happen to be indyted or appealed for fellonious takinge of any Money Goodes or Cattelles from the person of any other privylye without his Knowledge in anye place whatsoever, and thereuppon founde gyltie etc. . . . shall from hensforthe be admytted to have the benefyte of his or their Cleargie . . . and shall suffer Death in such maner and fourme as they shoulde if they were no Clarkes.* s 2: Hitherto if a surrender was made to the ordinary, the surrendered could not be arraigned for a former offence, having his clergy of a later [cf. *leg. Hen. I* c 5 § 10, 25 *Ed. III* (1351/2) st. 6 c 5]. This is now declared permissible if there was no clergy for the earlier offence.

18 *Eliz.* (1575/6) c 3 s 3 declares a rogue guilty of a third offence to be a felon without benefit.

[8] On the double meaning of *beneficium cleri* in the older time see § 60, notes 35, 36.

[9] 18 *Eliz.* (1575/6) c 7 *An Acte to take awaye Cleargie from thoffendours in Rape and Burglarye, and an Order for the Deliverye of Clarkes convicte without Purgacion.*

Even after the effect of *beneficium* had been thus curtailed, statute after statute in course of the succeeding centuries reduced the number of cases in which it was pleadable.[10] When in practice it had almost become the rule that clergy was no longer allowed, 7 & 8 *Geo. IV* (1827) c 27 repealed the various clauses etc. relative thereto,[11] whilst 7 & 8 *Geo. IV* c 28 declared that, 'it being expedient to abolish benefit of clergy,' the plea of 'not guilty' without more shall be deemed to put the prisoner on his trial by jury in any indictment of treason, felony or piracy, and that benefit of clergy with respect to persons convicted of felony shall be abolished.[12] 4 & 5 *Vict.* (1841) c 22 removed any privileges in cases of felony which might still have belonged to peers.[13]

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s 1: For *felonious rape or ravishement of women, maids, wives and damosels* and for *felonious burglary* benefit of clergy shall not in future be granted.

s 2: *And moreover be yt further enacted . . . , That every person and persons which at any tyme after the ende of this present Session of Parliament, shalbe admytted and allowed to have the Benefitt or Priviledge of his or their Clergie, shall not thereuppon be delyvered to the Ordinarye as hath ben accustomed; but after such Clergie allowed, and burninge in the Hande accordinge to the Statute in that Behalf provided* (cf. 32 *Hen. VIII* c 3 s 2, above, note 5), *shall forthwith be enlardged and delivered owte of Prison by the Justices before whome suche Cleargie shalbe graunted, that cawse notwithstandinge.*

s 3: *Provided nevertheles and be yt also enacted by thaucthoritye aforesaide, That the Justices before whome any suche Allowaunce of Cleargie shalbe had, shall and may, for the further Correccion of suche persons to whome suche Cleargie shalbe allowed, deteyne and kepe them in pryson for suche convenient tyme as the same Justices in their discrecions shall thinke convenient, so as the same do not exceede one yeeres Imprysonment, . . .*

s 4: Intercourse with a girl under ten years of age is declared to be felony without benefit.

s 5 (corresponds to 8 *Eliz.* c 4 s 2; see above, note 7): . . . *every person and persons which shall hereafter be admitted to have the Benefitt of his or their Cleargie shall, notwithstanding his or their Admission to the same, be put to answere to all other Felonies, whereof he or they shalbe hereafter indicted or appealed, and not beinge thereof before acquited convicted attainted or pardoned, and shall in suche manner and fourme be arraigned tried adjudged and suffer suche execucion for the same as he or they shoulde have doone yf, as Clark or Clarkes convicte, they had ben delyvered to the Ordinary, and there had made his or their Purgacions; . . .*

[10] See more in Blackstone, *Commentaries* IV, 369 ff.

[11] Among the acts touched is 25 *Ed. III* st. 6 c 4, which granted clergy in certain cases of treason (cf. § 60, note 44).

[12] 7 & 8 *Geo. IV* (1827) c 28 *An Act for further improving the Administration of Justice in Criminal Cases in England.* s 1: *enacted . . . That if any Person, not having Privilege of Peerage, being arraigned upon any Indictment for Treason, Felony, or Piracy, shall plead thereto a plea of "Not guilty," he shall by such Plea, without any further Form, be deemed to have put himself upon the Country for Trial; and the Court shall, in the usual Manner, order a Jury for the Trial of such Person accordingly.* s 6: *And be it enacted, That Benefit of Clergy, with respect to Persons convicted of Felony, shall be abolished; . . .*

[13] It had become doubtful whether in spite of the provision in 7 & 8 *Geo. IV* c 28 the special clause touching peers in 1 *Ed. VI* c 12 s 13 (cf. above, note 9) remained in force. 4 & 5 *Vict.* c 22, therefore, expressly repeals the clause in

b. Competence in respect of causes.

The competence of the ecclesiastical courts in civil causes remained almost untouched long after the reformation.[14] Not until the nineteenth century was it finally abolished in regard to all important matters. In the collection of church dues the greater number of cases to which it was applicable disappeared with the commutation and partial redemption of tithes under 6 & 7 *Gul. IV* (1836) c 71 and later acts, and with the abolition of compulsory church rates under 31 & 32 *Vict.* (1868) c 109. In testamentary causes and matters of probate the competence of ecclesiastical courts was ended and transferred to a secular court by 20 & 21 *Vict.* (1857) c 77.[15] In like manner 20 & 21 *Vict.* (1857) c 85 extinguished the jurisdiction vested in such courts in matters matrimonial.[16] By

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question and declares . . . *that every Lord of Parliament or Peer of this Realm having Place and Voice in Parliament, against whom any Indictment for Felony may be found, shall plead to such Indictment, and shall upon Conviction be liable to the same Punishment as any other of Her Majesty's Subjects are or may be liable upon Conviction for such Felony,* . . .

[14] Cf. 1 *Ed. VI* c 2 s 3 (printed § 6, note 42). Of changes in this sphere to be mentioned is perhaps only the competence given to secular courts in some cases relating to the collection of tithes and other church dues. Cf. *e.g.* 2 & 3 *Ed. VI* (1548) c 13 ss 1, 15 (thereon, Phillimore, *Eccles. Law* 1502), parliamentary ordinance of 8th Nov. 1644 (in place of proceedings—become inadmissible—before an ecclesiastical court, action before two justices of the peace), for some parishes in the city of London: 22 & 23 *Car. II* c 15 ss 11–14, for recovering of tithes and offerings of a small amount, and of tithes owed by Quakers, by summary proceedings before two justices of the peace: 7 & 8 *Gul. III* c 6; 7 & 8 *Gul. III* c 34; 1 *Geo. I* st. 2 c 6 s 2; 53 *Geo. III* c 127; 7 *Geo. IV* c 15; 5 & 6 *Gul. IV* c 74; 4 & 5 *Vict.* c 36 (brought together in Phillimore 1502).

[15] Originally the *Court of Probate.* See more in Gneist, *Verwaltungsrecht* p. 156. 20 & 21 *Vict.* c 77 s 3 runs: *The voluntary and contentious Jurisdiction and Authority of all Ecclesiastical, Royal Peculiar, Peculiar, Manorial, and other Courts and Persons in England, now having Jurisdiction or Authority to grant or revoke Probate of Wills or Letters of Administration of the Effects of deceased Persons, shall in respect of such Matters absolutely cease; and no Jurisdiction or Authority in relation to any Matters or Causes Testamentary, or to any Matter arising out of or connected with the Grant or Revocation of Probate or Administration, shall belong to or be exercised by any such Court or Person.* s 23: . . . *no Suits for Legacies, or Suits for the Distribution of Residues, shall be entertained by* . . . *any Court or Person whose Jurisdiction as to Matters and Causes Testamentary is hereby abolished* —After the reformation, 22 & 23 *Car. II* (1670/1) c 10 *An Act for the better setling of Intestates Estates* had (a first *secular* injunction) regulated the procedure of the ecclesiastical courts in administrations, and had at the same time fixed a definite order of succession.—During the first revolution an ordinance of the rump parliament, 8th Apr. 1653, vested judicial power in these matters, so far as the provinces of Canterbury and York were concerned, in a commission. Cf. also Cromwell's ordinances of 24th Dec. 1653 and 3rd Apr. 1654, together with the act of the Cromwellian parliament of 1656 c 10.

[16] 20 & 21 *Vict.* c 85 s 2 runs: *As soon as this Act shall come into operation, all Jurisdiction now exerciseable by any Ecclesiastical Court in England in respect of Divorces a Mensa et Thoro, Suits of Nullity of Marriage, Suits of Jactitation of Marriage, Suits for Restitution of Conjugal Rights, and in all Causes, Suits, and Matters Matrimonial, shall cease to be so exerciseable, except so far as relates to the granting of Marriage Licences, which may be granted as*

21 & 22 *Vict.* (1858) c 93 the secular court for divorce and matrimonial causes was declared competent to determine questions of legitimacy, the validity of marriages and the right to be deemed natural-born subjects.[17] Thus the civil jurisdiction of the ecclesiastical courts as to the laity is confined at present to a very small field,[18] and is, furthermore. restricted therein by the competence claimed (as in the middle ages) by the secular courts on the most various grounds.

The penal jurisdiction of the ecclesiastical courts has likewise not been abolished in principle so much as driven back step by step.

5 *Eliz.* (1562/3) c 23 made the writ *de excommunicato capiendo* more effective by directing that it should be returnable in the court of king's bench; the latter, if the accused were not found, was to award a *capias* against him; forfeitures were fixed for not appearing on a first, second, third etc. *capias*. The same act, on the other hand, limited the competence of the ecclesiastical courts in criminal matters, in that it laid down that the party concerned might plead that all pains and forfeitures against him were void if the excommunication were not for heresy, or for refusing (1) to have his child baptized, (2) to receive the communion as it is now commonly used in the church of England, (3) to attend divine service according to the forms of that church, or for incontinency, usury, simony, perjury in the ecclesiastical court, or idolatry.[19] The limitations corresponded in the main to the law as it had been hitherto; new, however, is it that the party may invoke the decision of the secular courts as to the compe-

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if this Act had not been passed.—To deal with all such matters there was instituted a secular *Court for Divorce and Matrimonial Causes*, the chief judge of which was, however, identical with the judge of the court of probate. The constitution and procedure of this court were frequently altered in unimportant points. Cf. 22 & 23 *Vict.* (1859) c 61; 23 & 24 *Vict.* (1860) c 144; 25 & 26 *Vict.* (1862) c 81. See more in Gneist, *Verwaltungsrecht* § 157. Probate and matrimonial courts have since 36 & 37 *Vict.* c 66 *Judicature Act* 1873 been merged in the *Probate, Divorce and Admiralty Division* of the supreme court.—According to Phillimore 1207, note *k*, the ecclesiastical court of the isle of Man still retains the old jurisdiction of the ordinary as to testaments and marriages.—During the first revolution an act of the Barebone parliament, 24th Aug. 1653 (confirmed for a limited time by act of the parliament of 1656 c 10), jurisdiction in matrimonial causes was vested in temporal courts.

[17] *An Act to enable Persons to establish Legitimacy and the Validity of Marriages, and the Right to be deemed natural-born Subjects.*—The competence of the ecclesiastical courts is not mentioned in the act.

[18] According to Phillimore 1076, civil jurisdiction as to the laity relates now only to the fabric and ornaments of the church, the churchyard and the churchwardens. Gneist, *Verwaltungsrecht* § 171 mentions a few further cases.

[19] s 7: . . . *And* . . . *yf in the Significavit* (*i.e.* the communication of the *Court of Chancery* to the sheriff touching the request of the bishop, on which the *capias* follows) *yt bee not conteyned that Thexcommunicatyon dothe proceade upon some Cause or Contempte of some originall Matter of Heresie, or refusing to have his or their Childe baptysed, or to receave the Holy Communyon as yt commonlye ys nowe used to bee receyved in the Churche of Englande, Or to come to Dyvyne Service nowe commonlye used in the said Churche of Englande, or Errour in Matters of Religyon or Doctryne nowe receyved and alowed in the sayd Churche of Englande, Incontinencye Usurye Symonye Perjurye in the Ecclesiasticall Courte or Idolatrye, That then all and every paynes and forfaitures lymitted agaynst suche persons excommunicate by this Estatute, by reason of . . . suche Significavit wanting all the Causes afore mentioned. shalbee utterly voyde in Lawe and by waye of Plea to bee alowed to the partie greved:* . . .

tence of the ecclesiastical, even after the issue of the writ *de excommunicato capiendo*.

Penal powers against heresy were restricted in the sixteenth and seventeenth centuries, and still further after the end of the seventeenth, without, however, being wholly annulled.[20]

Serious offences against morality have been made liable to punishment in the temporal courts; the right of the ecclesiastical courts to deal with such offences has never been formally annulled, but, as against laymen, it has long been in abeyance; against clerks only may the ordinary ecclesiastical punishments be employed.[21]

The jurisdiction of the ecclesiastical courts in suits for defamation was extinguished by 18 & 19 *Vict.* (1855) c 41.[22]

Blasphemy is punished by the secular court.[23] 29 *Car. II* (1677) c 9 left the spiritual courts still competent in respect thereto;[24] how far their power has been taken away by the various toleration acts is doubtful.[25]

23 & 24 *Vict.* (1860) c 32 abolished the competence of the ecclesiastical courts as against laymen for brawling in church, and fixed a civil penalty for riotous, violent or indecent behaviour in any church or churchyard of the church of England and Ireland, or in any duly certified place of religious worship, or in any burial ground.[26]

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[20] Cf. § 19, nr. notes 19 ff., § 54 nr. notes 62–65.

[21] Errington, *The Clergy Discipline Act*, 1892, *and Rules and the Church Discipline Act*, 1840, *with notes*. London, 1892, p. 3. The royal commission on ecclesiastical courts, 1832, reported: *it is competent to institute criminal proceedings for incest, adultery and fornication: but in the Arches Court and the Consistory Court of London no such suit has been brought for a long series of years; in some of the country courts they have been very rare.* According to the report of a committee of the lower house of the convocation of Canterbury (appended to *Chron. of Conv.* 1872), in 1828 there were proceedings in a case of incest in the *Arches Court*; in 1829 in the *Chancery Court of York* for incontinence; in 1830 for immoral conduct.

According to 27 *Geo. III* (1787) c 44 s 2 suits in ecclesiastical courts for fornication, incontinence or brawling in church had to be commenced within eight months; prosecution for fornication was not allowed after the parties offending had intermarried.

The right to inflict criminal punishments upon clerks for offences against morality, which belonged to the spiritual court under 1 *Hen. VII* c 2 (cf. § 60, note 29), was annulled, that act being repealed by 3 & 4 *Vict.* (1840) c 86 *Church Discipline Act*. Only power of disciplinary punishment was retained.

[22] *An Act for abolishing the Jurisdiction of the Ecclesiastical Courts of England and Wales in Suits for Defamation.* s 1: *From and after the passing of this Act it shall not be lawful for any Ecclesiastical Court in England or Wales to entertain or adjudicate upon any Suit for or Cause of Defamation. . . .* —By 27 *Geo. III* (1787) c 44 s 1 suits in ecclesiastical courts for defamatory words had to be commenced within six months.

[23] Blasphemy is punishable by common law. Cf. further the statutes: 3 *Jac. I* (1605/6) c 21; 21 *Jac. I* (1623/4) c 20, prolonged by 3 *Car. I* (1627) c 5 s 3; ordinances of the rump parliament, 28th June and 9th Aug. 1650; 6 & 7 *Gul. & Mar.* (1694) c 11. 9 *Gul. III* (1697/8) c 35 *An Act for the more effectual suppressing of Blasphemy and Profaneness* threatens civil disadvantages *if any Person or Persons having been educated in or at any time having made Profession of the Christian Religion within this Realm shal by writing printing teaching or advised speaking deny any one of the Persons in the Holy Trinity to be God or shal assert or maintain there are more Gods than One or shal deny the Christian Religion to be true or the Holy Scriptures of the Old and New Testament to be of Divine Authority.* With the latter act cf. 53 *Geo. III* c 160, repealed as obsolete by 36 & 37 *Vict.* (1873) c 91.

[24] 29 *Car. II* c 9 s 2.

[25] Phillimore, *Eccles. Law* 1084.

[26] Cf. 5 & 6 *Ed. VI* c 4 touching the jurisdiction of the ecclesiastical court in

In cases of perjury acts of Elizabeth reserved to the ecclesiastical courts such jurisdiction as they had before possessed.[27] The competence of such courts was, however, only recognized for cases in which the perjury was committed in a spiritual court.[28] The opinion now is that perjury in *any* court may be punished by indictment or information in the temporal courts.[29]

The civil penalties against usury were regulated anew under Henry VIII and Edward VI, without any mention being made of proceedings before the ecclesiastical court.[30] When in the reign of Elizabeth the law was again amended, punishment under ecclesiastical law was retained side by side with the civil penalties, but only if the interest charged exceeded ten per cent.[31] By

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cases of brawling in church. 23 & 24 *Vict.* c 32 repeals that act as far as refers to laymen; it is further laid down in s 1: *That it shall not be lawful for any Ecclesiastical Court in England or Ireland to entertain or adjudicate upon any Suit or Cause of Brawling commenced after the passing of this Act against any Person not being in Holy Orders . . .*—As early as 1 *Gul. & Mar.* sess. 1 (1688) c 18 s 15 penalties were fixed for disturbing a congregation or misusing a preacher; similarly, in 52 *Geo. III* (1812) c 155 s 12, the terms there being somewhat wider; s 13 contains a proviso for the ecclesiastical jurisdiction of the church of England.

[27] 5 *Eliz.* (1562/3) c 9 *An Act for the Punyshement of suche persones as shall procure or commit any wyllful Perjurye.* s 1 fixes a penalty for procuring a witness to commit perjury (32 *Hen. VIII* c 9 s 3 cited), or for committing perjury in the king's courts, people's courts or private courts. In s 1 the ecclesiastical courts are not mentioned. s 5 runs: *Provided alwayes, That this Acte nor any thing therin conteyned shall not extende to any Spirituall or Ecclesiasticall Courte or Courtes within this Realme of Englande or Wales or the Marches of the same; but that all and everye suche Offendour or Offendours as shall offende in fourme aforesaid shall and maye bee punished by suche usuall and ordynarye Lawes as heretofore hathe been and yet ys used and frequented in the said Ecclesiasticall Courtes; . . .* By s 7 the authority to punish perjury given by 11 *Hen. VII* c 25 is reserved. The act is only to continue until the end of the next parliament.

[28] By 5 *Eliz.* (1562/3) c 23 s 7 (cf. above, note 19) the judgment of the ecclesiastical court could only be carried into effect if the perjury had been committed in such a court.

[29] Cf. Phillimore, *Eccles. Law* 1085.

[30] 37 *Hen. VIII* (1545) c 9 repeals as obscure the earlier acts against usury. If more than 10 per cent. be taken, sentence of imprisonment, fine or forfeiture is to be pronounced by the king's courts. 5 & 6 *Ed. VI* (1551/2) c 20 repeals the preceding act. No interest whatever may be taken; otherwise proceedings will follow before the king's courts.

[31] 13 *Eliz.* (1571) c 8 *An Acte agaynst Usurie.* s 1: 5 & 6 *Ed. VI* c 20 is repealed, and 37 *Hen. VIII* c 9 revived. s 4: *. . . as all Usurie Loane and forbearing of Monye . . . for Gayne . . .* (=charging of *any* interest) *being forbydden by the Lawe of God is synne and detestable*, where the interest charged is not more than 10 per cent. the gain is forfeited, all such forfeitures to be recovered by the process prescribed in 37 *Hen. VIII* c 9. s 8: *Provided alwayes, . . . That yf anye person or persons shall . . . offend contrary to the saide Statute 37 Hen. VIII c 9, that then all and every suche Offendour and Offendours shall and maye also be punished and corrected according to the Ecclesiasticall Lawes heretofore made agaynst Usurie; And that all and every person and persons offendinge in Usurie Shyftes or Chevysaunce agaynst this present Acte, and not taking or receyvinge but onely after the Rate of Tenne Poundes in the Hundred or under for a yeare, shalbe onely punyshed by the Paynes and Forfaytures provyded and appoynted by this Acte agaynst suche as shall not take or receave over and above the Rate of Tenne Poundes in the Hundred for a yere, and not otherwyse.* s 9: The validity of this act is for five years and then to the end of the first session of the next parliament — The time was prolonged by 27 *Eliz.* (1584/5) c 11 s 1, 29 *Eliz.* (1586) c 5 s 2,

later enactments (of Jas. I, Charles II and Anne) the penalties for taking interest at ten per cent. were imposed for taking eight, then six, then five. But whether the ecclesiastical punishments were also applicable under these altered circumstances is not plain from the acts in question.[32]

Against simony 31 *Eliz.* (1588/9) c 6 was the first act to allow procedure before civil courts, but it left the powers of the ecclesiastical courts untouched.[33] The secular courts are inclined to leave the question whether there have been simoniacal practices in any given case to the determination of the spiritual courts.[34]

Thus in theory the ecclesiastical courts still retain a considerable sphere of competence in criminal causes; but in practice their jurisdiction is seldom or never appealed to against laymen.[35] Against officers of the church their punitory powers are still exercised, but as disciplinary rather than punitory.

53 *Geo. III* (1813) c 127 further weakened ecclesiastical jurisdiction, in that it circumscribed more closely and modified the harshness of the measures which the spiritual court had at its disposal to enforce its judgments. It allowed for the future excommunication to be pronounced only as a spiritual censure in matters within ecclesiastical cognizance, and only in definitive sentences or *final* 'interlocutory decrees.' Thus excommunication ceased to be a punishment, especially for not answering to a summons, for disobedience to other orders of the spiritual court, and for contempt. In these latter cases, instead of the previous writ *de excommunicato capiendo*, a writ *de contumace capiendo* was to be sought from the

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31 *Eliz.* (1588/9) c 10 s 1, 35 *Eliz.* (1592/3) c 7 s 1; the act was made perpetual by 39 *Eliz.* (1597/8) c 18.

[32] 21 *Jac. I* (1623/4) c 17 *An Acte agaynst Usury.* s 1: In future only 8 per cent. may be charged; contracts in breach of this act are void; penalty thrice the sum lent. s 3: Act valid for seven years [made perpetual by 3 *Car. I* (1627) c 5 s 2]. s 4: *provided that no wordes in this Law contayned shalbe construed or expounded to allow the practise of Usurie in point of Religion or Conscience.*

12 *Car. II* (1660) c 13 *An Act for restraining the takeing of Excessive Usury* reduces (in agreement with an ordinance of the rump parliament, 8th Aug. 1651) the permissible interest to 6 per cent. ('*All*' acts of the irregularly summoned parliament of 12 *Car. II* were confirmed by 13 *Car. II* (1661) st. 1 c 7; the acts confirmed are cited singly, but this is not among them.)

13 *Ann.* (1713) c 15 *An Acte to reduce the Rate of Interest* fixes 5 per cent. as the highest allowable.

On later secular legislation touching usury see Blackstone, *Commentaries* IV, 156 f.

[33] *An Acte against Abuses in Election of Scollers and presentacions to Benefices.* s 8: *Provided alwaies, That this Acte or any Thinge herein conteyned, shall not in any wise extende to take awaye or restrayne any Punyshment Payne or Penaltie lymitted prescribed or instituted by the Lawes Ecclesiasticall for any the Offences before in this Acte mencioned, but that the same shall remayne in force and may be putt in due execucion as it might be before the makinge of this Acte.*

[34] Phillimore, *Eccles. Law* 1133 ff.

[35] *Phillimore v. Machon*, 1 *P. D.* p. 487, Dictum of the dean of the arches, lord Penzance (cited in Errington, *l.c.* p. 3): *It cannot, I think, be doubted, that a recurrence to the punishment of the laity for the good of their souls by ecclesiastical courts, would not be in harmony with modern ideas, or the position which ecclesiastical authority now occupies in the country.*

temporal authorities, but without change of effect or procedure.[36] In the cases in which excommunication was still allowable, every civil penalty or incapacity resulting from excommunication was abolished, excepting imprisonment under sentence of the ecclesiastical court for not more than six months or until absolution by the court before the expiry of that time.[37] Procedure upon a writ *de contumace capiendo* was regulated by later acts.[38]

B. THE SEVERAL COURTS.[a]

§ 62.

a. Royal court.

After that the ecclesiastical courts, up to and including the

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[36] 53 *Geo. III* c 127 *An Act for the better Regulation of Ecclesiastical Courts in England; and for the more easy Recovery of Church Rates and Tithes.* s 1: . . . *That, from and after the passing of this Act, Excommunication, together with all Proceedings following thereupon, shall in all cases, save those hereafter to be specified, be discontinued, throughout that Part of the United Kingdom of Great Britain and Ireland called England;* . . . (then follow the regulations as to the *writ de contumace capiendo*). s 2: *Provided always* . . . *That nothing in this Act contained shall prevent any Ecclesiastical Court from pronouncing or declaring Persons to be Excommunicate in definitive Sentences, or in interlocutory Decrees having the Force and Effect of definitive Sentences, such Sentences or Decrees being pronounced as Spiritual Censures for Offences of Ecclesiastical Cognizance* . . .

[37] 53 *Geo. III* c 127 s 3: . . . *That no Person who shall be so pronounced or declared Excommunicate, shall incur any Civil Penalty or Incapacity whatever, in consequence of such Excommunication, save such Imprisonment, not exceeding Six Months, as the Court pronouncing or declaring such Person Excommunicate shall direct, and in such case the said Excommunication, and the Term of such Imprisonment, shall be signified or certified to His Majesty in Chancery, in the same manner as Excommunications have been heretofore signified, and thereupon the Writ de Excommunicato Capiendo shall issue, and the usual Proceedings shall be had, and the Party being taken into Custody shall remain therein for the Term so directed, or until he shall be absolved by such Ecclesiastical Court.*

For Scotland 10 *Ann.* (1711) c 10 had already abolished all civil consequences of ecclesiastical (*i.e.* pronounced by the presbyterian state church) excommunication. s 12: . . . *That no Civil Pain or Forfeiture or Disability whatsoever shall be in any ways incurred by any Person or Persons by reason of any Excommunication or Prosecution in order to Excommunication by the Church Judicatories in* . . . *Scotland and all Civil Magistrates are hereby expressly prohibited and discharged to force or compel any Person* . . . *to appear when summoned or to give Obedience to any such Sentence when pronounced* . . .

[38] 2 & 3 *Gul. IV* (1832) c 93 *An Act for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland.*—3 & 4 *Vict.* (1840) c 93 *An Act to amend the Act for the better Regulation of Ecclesiastical Courts in England.*

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[a] Blackstone, *Commentaries* III, 64 ff.—Coke, *Institutes* IV, 321 ff.—Gneist, *Englisches Verwaltungsrecht* § 171.—Phillimore, *Eccles. Law* 1201 ff.—Report of the *Royal Commission on Ecclesiastical Courts*, 1883, I, pp. xx f., xxvi ff. (*Parliamentary Reports* vol. XXIV); on *Court of Delegates* and *Commission of Review*: Stubbs, *Historical Appendix I* pp. 47 ff. in Report just cited.—Stephen, *New Commentaries*, 11th Ed. III, 325 ff.

highest, had been for centuries independent, Henry VIII again called into existence a supreme civil court to determine appeals from the archiepiscopal court.[1] This was not, however, by the (first) 'Statute for Restraint of Appeals,' 24 *Hen. VIII* (1532/3) c 12. That act had laid down that in ordinary cases the decisions of the archbishops or their courts should be final, whilst in causes testamentary, matrimonial etc. which concerned the king, appeal should lie from the archiepiscopal court to the upper house of convocation. It was the second act relating to appeals, 25 *Hen. VIII* (1533/4) c 19, that first allowed appeal from the decisions of the archbishop's court to a commission to be named by the king on each occasion.[2] It was subsequently ruled that the jurisdiction reserved in the earlier act to the upper house of convocation was by the later abolished.[3]

Both the acts just mentioned were repealed by 1 & 2 *Phil. & Mar.* (1554 & 1554/5) c 8 s 3; but revived by 1 *Eliz.* (1558/9) c 1 s 2.

The several commissions (*judices delegati*) named to determine appeals lodged were termed collectively the 'High Court of Delegates in Ecclesiastical and Maritime Causes.'[4] By 8 *Eliz.* (1566) c 5 it was enacted that beyond this court no further appeal should lie.[5] Nevertheless, the kings granted, in some extraordinary cases, after the final decision of the court of delegates a re-examination by a 'Commission of Review.' The party concerned had no *right* to such re-examination of the case; and the practice was

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[1] Cf. § 23.

[2] s 4: . . . *And for lacke of justice at or in any the Courtes of the Archebisshopes of this Realme or in any the Kynges Domynyons, it shalbe lawfull to the parties greved to appele to the Kynges Majestie in the Kynges Courte of Chauncerie, and that upon every suche appele a commission shalbe directed under the greate seale to suche persones as shalbe named by the Kynges Highnes . . . lyke as in case of appele from the Admyrall Courte, to here and dyffynytyvely determyne suche appeles and the causes concernyng the same;* . . . Similarly, according to s 6, in the case of appeals from places exempt from the archiepiscopal jurisdiction.

[3] *Gorham v. Bishop of Exeter.* 15 *Q. B. R.* 52 against Blackstone, *Commentaries* III, 67.

[4] The court was competent to determine appeals in cases which fell under 25 *Hen. VIII* c 19 ss 4 and 6, also appeals against decisions of the admiralty court.—On the constitution of the commission of delegates see const. of Whitgift, 1587 (Wilkins, *Conc.* IV, 328) c 11: . . . *delegati plerumque e judicibus, advocatis, aut exercentibus in curiis archiepiscopi seliguntur* . . . In about half the cases only judges and other laymen were delegates, in about half bishops were also delegated. Stubbs, *Hist. App.* I, p. 47 to Report of the *Eccl. Courts Comm.* 1883, after Rothery, *Report to House of Commons*, 1868.

[5] *An Acte for thabridgement of Appeales in Suites of Cyvill and Maryne Causes:* . . . *That from the last daye of this present Session of Parlyament, all and everie suche Judgment and Sentence diffinytyve as shalbe gevin or pronounced in anye Civile and Marine Cause upon Appeale lawfully to be made therein to the Queenes Majestie in her Highnes Court of Chauncery, by suche Commyssioners or Delegates as shalbe nomynated and appointed by her Majestie her heyres or successours, by Commyssion under the Half Seale as it hath ben heretofore used in such Cases shall be finall, and no further Appeale to be had or made from the sayd Judgement or Sentence diffinytyve, or from the sayd Commyssioners or Delegates for or in the same;* . . .

without any statutory basis. The justification of it was that the popes had appointed such commissions *ad revidendum* after a verdict properly final, and that the pope's powers as head of the church had passed by the acts of supremacy to the king of England.[6]

Supreme appeal remained in this condition down to the nineteenth century. The first alteration was effected by 2 & 3 *Gul. IV* (1832) c 92. This act abolished the king's power to name special commissions to determine appeals in ecclesiastical causes, and from 1st February, 1833, transferred the powers of the high court of delegates to the king in council; no commission of review was to be granted after the passing of the act.[7] Next year 3 & 4 *Gul. IV* (1833) c 41 established a 'Judicial Committee of the Privy Council' to exercise all the judicial functions[8] which still in various departments belonged to the privy council. To this judicial committee were also referred appeals against the judgments of the ecclesiastical courts. Its constitution was so ordered that those members of the privy council who filled or had previously filled certain (specified) high judicial posts were to be members also of the committee. To the king was reserved the right of appointing under sign manual any two other persons, being privy councillors, to be members. Nothing in the act made it necessary that any spiritual person should be on the judicial committee.[9] The clergy actively opposed this constitution of the court. For some cases, viz.

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[6] Coke, *Inst.* IV, p. 341: It was so decided by the *King's Bench; Trin.* 39 *Eliz. Hollingworth's case;* such commissions were always admissible as courts of appeal from special commissions named by the king; explicitly such an appeal was reserved *e.g.* in a clause of the high commission. (This clause appears first, according to Stubbs, *Hist. App.* I, p. 50 *l.c.*, in the commission of 29th Apr. 1620, Rymer, *Foedera* 3rd Ed. vol. VII pt. III p. 134, and is omitted again in the commission of Charles I, 1st July, 1625, Rymer, *Foedera* 3rd Ed. vol. VIII pt. I p. 90, and in the later commissions printed.)

[7] *An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council.*

s 1: 25 *Hen. VIII* c 19, in so far as therein appeal to the *King in Chancery* is granted, and in so far as the king is empowered to name a commission of judges to determine such appeals, is repealed.

s 2: 8 *Eliz.* c 5 is repealed.

s 3: . . . *it shall be lawful to and for every Person who might heretofore, by virtue of either of the said recited Acts, have appealed or made Suit to His Majesty in His High Court of Chancery, to appeal or make Suit to the King's Majesty, His Heirs or Successors, in Council . . . ; and that every such Judgment . . . shall be final and definitive, and that no Commission shall hereafter be granted or authorized to review any Judgment or Decree to be made by virtue of this Act.*

[8] Brought together in Gneist, *Engl. Verwaltungsr.* § 18.

[9] *An Act for the better Administration of Justice in His Majesty's Privy Council.*

s 1: The judicial committee is to consist of the president of the privy council, the lord chancellor and those members of the council who are or have been president of council, lord chancellor, lord chief justice or judge of the court of king's bench, master of the rolls, vice-chancellor of England, lord chief justice of judge of common pleas, lord chief baron or baron of exchequer, judge of the prerogative court, judge of the high court of admiralty, chief judge of the court in bankruptcy; it shall furthermore be lawful for his majesty to appoint

all those concerned with discipline, 3 & 4 *Vict.* (1840) c 86 'An Act for better enforcing Church Discipline' brought about a change: every archbishop and bishop sworn of the privy council was to be, for the purposes of ecclesiastical appeals, a member of the judicial committee, and no such appeal was to be heard unless at least one archbishop or bishop were present.[10]

By 36 & 37 *Vict.* c 66 (*Supreme Court of Judicature Act*, 1873) various (specified) courts were united into one supreme court, a division thereof having appellate jurisdiction under the name of 'Her Majesty's Court of Appeal.' Under this act power was given the sovereign to assign by order in council all cases hitherto belonging to the judicial committee of the privy council to the newly formed court of appeal. For ecclesiastical causes, according to standing orders to be made subsequently, archbishops or bishops of the church of England were to be called in as assessors.[11] The exercise of the power conferred on the crown was, however, postponed by 38 & 39 *Vict.* c 77 (*Supreme Court of Judicature Act*, 1875),[12] and the power itself revoked by 39 & 40 *Vict.* c 59 (*Appellate Jurisdiction Act*, 1876).

By the last mentioned act the sole competence of the judicial committee of the privy council was restored, the special provision as to the constitution of that committee when determining disciplinary causes against the clergy was repealed, and a general regulation made that a definite number of archbishops and bishops was to be fixed by order in council, such archbishops and bishops to attend as assessors at the hearing of all ecclesiastical causes.[13]

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by sign manual two other persons, being privy councillors, to be members of the committee.

s 3: . . . *That all Appeals or Complaints in the Nature of Appeals whatever, which, either by virtue of this Act, or of any Law, Statute, or Custom, may be brought before His Majesty or His Majesty in Council from or in respect of the Determination, Sentence, Rule, or Order of any Court, Judge, or judicial Officer, . . . shall . . . be referred by His Majesty to the said Judicial Committee of His Privy Council, and that such Appeals, Causes, and Matters shall be heard by the said Judicial Committee, and a Report or Recommendation thereon shall be made to His Majesty in Council for His Decision thereon as heretofore, in the same Manner and Form as has been heretofore the Custom with respect to Matters referred by His Majesty to the whole of His Privy Council or a Committee thereof (the Nature of such Report or Recommendation being always stated in open Court).*

[10] s 16.—By degrees several minor changes took place in the constitution of the judicial committee. Cf. especially 20 & 21 *Vict.* (1857) c 77 s 115; 34 & 35 *Vict.* (1871) c 91; 39 & 40 *Vict.* (1876) c 59 c 14; 44 *Vict.* (1881) c 3.

[11] s 21: . . . *The Court of Appeal, when hearing any appeals in Ecclesiastical Causes . . . shall be constituted of . . . Judges thereof, and shall be assisted by . . . assessors being Archbishops or Bishops of the Church of England, . . .*

[12] s 2.

[13] s 24 repeals: 3 & 4 *Vict.* c 86 s 16, 36 & 37 *Vict.* c 66 s 21 u. a., 38 & 39 *Vict.* c 77 s 2.

s 14 enacts: . . . *Her Majesty may by Order in Council, with the advice of the Judicial Committee of Her Majesty's Privy Council or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops*

§ 63.

b. Archiepiscopal courts.

a. Provincial court.

In connexion with the new ordering of procedure in liturgical disputes the 'provincial court' was created as the common court of both archiepiscopal provinces by 37 & 38 *Vict.* (1874) c 85, the 'Public Worship Regulation Act.' It is to be presided over by a judge ('Judge of the Provincial Courts of Canterbury and York'), who is to be named by both archbishops and confirmed by the king.[1] The act vests in the new court—in this respect, as a rule, a court of first instance—the jurisdiction in causes relating to ornaments or divine service.[1a] As soon as a vacancy should occur in the office of official principal of the arches court of Canterbury, or of official principal or auditor of the chancery court of York, or of master of the faculties to the archbishop of Canterbury, all the powers of these officers were to pass to the judge of the provincial court for the time being. Thus, with a few insignificant exceptions to be mentioned below, all earlier archiepiscopal courts of both provinces were united by the combination of their jurisdiction in a single person. But in name those earlier courts still survive:—

1. Appeal court of province of Canterbury (Arches court).[2]
2. Appeal court of province of York (Chancery court of York).

These were the regular archiepiscopal courts having contentious jurisdiction. Each of them was presided over by a judge named by the archbishop of the province. In Canterbury the title of the judge was official principal or dean of the Arches, in York official principal or auditor.[3] These courts decide appeals from the diocesan

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being members of Her Majesty's Privy Council, or any two of them, make rules for the attendance, on the hearing of ecclesiastical cases as assessors of the said Committee of such number of the archbishops and bishops of the Church of England as may be determined by such rules . . . The order in council is to be laid before parliament.

[1] The judge must be a member of the church of England. The person appointed must be a barrister-at-law in ten years' actual practice, or must have been a judge of one of the superior courts of law or equity. If the archbishops do not appoint within six months, the sovereign may appoint by letters patent.

[1a] See s 8 of the act for full terms.

[2] The name 'Court of Arches' is due to the fact that the court formerly sat in the church *Sancta Maria de arcubus*, St. Mary-le-Bow, which was exempt from the jurisdiction of the bishop of London. At a later time the sessions were held in Doctors' Commons Hall. Besides St. Mary-le-Bow twelve other parishes in London were exempted out of the bishop's jurisdiction. The dean of peculiars under whom they were placed was called from the name of the church 'dean of the Arches.' Originally the dean of the Arches was a subordinate of the official, subsequently he became his commissary, and finally the two offices were regularly held together. The latter title thus came to be employed for the archbishop's judge. *Ecclesiastical Courts Commission*, 1883, Parliamentary Reports, vol. XXIV.

[3] The name is a reminiscence of the 'Court of Audience,' mentioned under B.

and other courts within the province; or they may take original cognizance if the judge of the lower court sends the case to the court of appeal by letters of request.[4]

3. Court of Faculties.

This was an archiepiscopal court which existed only in the province of Canterbury, but was competent for both provinces. Its president, appointed by the archbishop of Canterbury, bore the title of master of the faculties. To the sphere of operations of this court belongs certain business of a non-contentious character, such as the granting of special dispensations, licensing to marry without banns or to hold pluralities, permitting a son to succeed to his father's benefice and the like; lastly, the preparation of appointments of public notaries, to be made by the archbishop of Canterbury.[5]

b. The (former) courts of audience.

An archiepiscopal court called the 'Court of Audience' existed side by side with the archiepiscopal court of appeal in Canterbury down to about the middle of the seventeenth century and probably also at an earlier time in York. Originally the name seems to have been applied to the archiepiscopal tribunal in the cases in which the archbishop—with or without assessors—adjudicated in person, instead of leaving the cause to be heard by his official. Afterwards each court of audience received a judge appointed by the archbishop and entitled 'official of the audience' or 'auditor.' But even at

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[4] As a rule the higher judge is not bound to take the case upon letters of request from the lower. It has, however, been decided by the privy council that the court of appeal must accept letters of request sent it under 3 & 4 *Vict.* c 86, the Church Discipline Act, the practical effect of which is to convert the court of appeal, in such cases, into a court of first instance. See on this point and generally on letters of request Phillimore 1278, 1324. The patent of a judge of the Arches court (1867) is given in Phillimore 1205. Cf. also § 38, notes 5 and 6.—According to the *Report of the Ecclesiastical Courts Commission*, 1883, I, p. xx the court of Arches was likewise a court of first instance in all ecclesiastical matters, whether in virtue of its own rights or of those derived from the legatine capacity of the archbishop of Canterbury. Cf. letter of Alexander III to the bishops of the province of Canterbury, 1168–70, in *Materials for Hist. Becket* (*Rer. Brit. Scr.* No. 67) V, 297.

[5] The chief part of the competence of this court and the extension of its powers to the whole of England are based on 25 *Hen. VIII* c 21 (*An Acte for the exoneracion frome exaccions payde to the See of Rome;* repealed by 1 & 2 *Phil. & Mar.* c 8 s 3; revived by 1 *Eliz.* c 1 s 2). This act empowers the archbishop of Canterbury to grant to the king or to his subjects all such *licenses, dispensacions, composicions, faculties, grauntes, rescriptes, delegacies or any other instrumentes or writings* as before had been obtained by the king or any of his subjects from Rome, but . . . *in no maner* . . . *for any cause or matter repugnant to the law of Almyghty God* (ss 2, 3). Dispensations in causes unwonted to be licensed were not to be granted until the king or his council would be advertised thereof and not without the king's licence being obtained (s 3). Licences for things whereof the tax at Rome exceeded four pounds were to be under the great seal (s 4).—On the appointment of notaries see Stubbs, Introduction to *Rer. Brit. Scr.* No. 76, vol. I, p. lxxix and Phillimore, *Eccles. Law* pp. 1232 ff.

this later stage the archbishop appears to have frequently sat in person with the official as his assessor. The competence of the court of audience was apparently the same as that of the appeal court. Courts of audience were practically obsolete in the beginning of the eighteenth century.[6]

c. *The (former) prerogative courts.*

A court of this name was found in each of the two provinces from the later middle age to the middle of the nineteenth century. The prerogative court was originally a division of the ordinary archiepiscopal court, subsequently becoming independent. The judge, though sometimes official principal as well,[7] received a distinct commission from the archbishop. The court had jurisdiction in testamentary and probate cases which, exceptionally, belonged to the archiepiscopal not the diocesan court, viz.—

1. When the testator had left *bona notabilia i.e.* above five pounds (in the bishopric of London, above ten pounds) in another diocese than that in which he died;
2. When the testator was a bishop.

By 20 & 21 *Vict.* (1857) c 77 jurisdiction in testamentary matters and matters of probate is now vested in secular courts.

§ 64.

c. Episcopal courts.

a. Consistory courts.

In every see there is a consistorial court over which presides a judge ('official principal') appointed by the bishop. The post has long been filled (apart from a few exceptional cases) in all the bishoprics of England by the same person as is named vicar-general, that is, the representative of the bishop in the current business of administration. The holder of the combined offices of vicar-general and official principal is called chancellor.[1] Hence the consistorial court is sometimes termed the chancellor's court.

This court is concurrently with the archidiaconal court competent

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[6] Cf. on the *Courts of Audience* Phillimore, *Eccles. Law* 1201, the writers cited by Phillimore 1204, and the Report of the *Eccles. Courts Commission*, 1883, I, p. xx. Coke, *Inst.* IV, 337 says of the *Court of Audience: This Court is kept by the archbishop in his palace, and medleth not with any matter between party and party of contentious jurisdiction, but dealeth with matters pro forma, as confirmations of bishops elections, consecrations and the like, and with matters of voluntary jurisdiction, as the granting of the guardianship of the spiritualities sede vacante of bishops, admission and institution to benefices, dispensing with banes of matrimony, and suche like.* The account, however, is probably not quite accurate.

[7] *Report of the Eccles. Courts Commission*, 1883, I, p. xxiii.

[1] Cf. § 38, notes 7, 8.

as a court of first instance; but it also serves as a court of appeal from the latter. From it appeal is to the archiepiscopal court.

The consistorial court has been deprived of a large part of its competence by the church discipline act, 3 & 4 *Vict.* c 86, and the public worship act, 37 & 38 *Vict.* c 85, which assign disputes which come under them to the bishop, to special commissions, or to the provincial court. The 'Clergy Discipline Act,' 55 & 56 *Vict.* (1892) c 32, has, however, again given the chancellor the presidency in proceedings against a clergyman for immorality. The chancellor alone is to decide any question of law; but if any question of fact has to be determined and either party to the case so requires, five assessors are chosen as members of the court.[2]

For the diocese of York there is a consistorial court at York;[3] for the diocese of Canterbury, only a court of the commissary of the archbishop.[4] In Canterbury there is also a 'Court of Peculiars,' for a number of parishes exempt from the jurisdiction of the bishops and immediately subject to the archbishop.[5]

b. Courts of episcopal commissaries.

In rare instances episcopal commissaries are appointed to exercise administration and jurisdiction within definite parts of a diocese. The commissaries are practically equal to the archdeacons; but their powers rest not on their own rights as holders of certain offices, but on the special commission granted by the bishop. It has been ruled that appeal from the court of the commissary goes, not like appeal from the archdeacon's court to the consistorial court, but immediately to the archiepiscopal court.

The bishop may appoint commissaries, or commissions consisting of several members, to perform judicial acts in all cases in which he is himself competent. The commission issued is for the particular cause, not general. The chancellor, like any other person, may be a special commissary.

§ 65.

Archidiaconal courts.

The process by which in the middle ages the archdeacons grew from assistants of the bishop for the time being to be independent officers, had as a consequence that the jurisdiction which they originally exercised in the name and as representative of the bishop came to be regarded as naturally attaching to the office. Thus most archdeacons in England obtained a jurisdiction which covered, for

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[2] On the question how far the bishop may sit instead of his chancellor see § 36, note 9.

[3] The office of judge is usually given to the archiepiscopal vicar-general.

[4] Phillimore, *Eccles. Law* pp. 1201, 1207.

[5] Stephen, *New Commentaries* 11th Ed. III, 331: a branch of the court of Arches.

the most part, the same matters as that of the consistorial courts.[1] Where this competence of the archdeacon's court had not arisen or had been only incompletely developed, it was established to the full extent by 6 & 7 *Gul. IV* (1836) c 77.[2] As judge in such a court the archdeacon may officiate in person or through an 'official' appointed by him. Appeal is to the consistorial court.[3]

§ 66.

Other ecclesiastical courts.

a. Chapter courts.

Some chapters had down to the middle of the present century jurisdiction in various exempt districts.(1) As the chapter is not subject to the archdeacon it has also frequently a jurisdiction, corresponding to the archidiaconal, for the precincts of the chapter church. Most such rights are now obsolete; though the chapters in certain cases perhaps still possess some small jurisdiction as to matters connected with the fabric and interior arrangements of the cathedral. But 37 & 38 *Vict.* (1874) c 85, establishing as it does other authorities solely competent to deal with such matters, has left the competence of the chapters of a shadowy nature. Some deans and chapters still preserve their 'officials,' who act, however, not as judges but as legal advisers in matters affecting the interests of the chapter.(2)

b. Rural dean's court.

Some rural deans about the twelfth and thirteenth centuries exercised in minor matters independent jurisdiction in their districts.(3) But this jurisdiction was afterwards absorbed by the archdeacon's court; and but few traces of it have survived until the nineteenth century.(4)

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[1] Cf. § 42.

[2] s 19: . . . *enacted, That all Archdeacons throughout England and Wales shall have and exercise full and equal Jurisdiction within their respective Archdeaconries, any Usage to the contrary notwithstanding.*

[3] In the Isle of Man an act of the Insular Legislature in 1874 abolished the voluntary and contentious jurisdiction of the archdeacon's court and transferred it to the courts of the bishop. Supplement to *Chron. of Conv. Cant.* 1885, No. 183 p. 17 note. *Report of the Ecclesiastical Courts Commission*, 1883 II, 322.

(1) It has been decided, *Parham v. Templar* (in 1820; Phillimore, *Eccles. Reports* III, 223 ff.) that appeals from the judgment of the chapter court when acting as the court of an exempt district go to the archiepiscopal court of appeal.

(2) Phillimore, *Eccles. Law* 1203.

(3) Cf. § 43, note 6.

(4) Here belong, *e.g.* the jurisdiction of the dean in Jersey and Guernsey, established by the canons of 1623, Phillimore 1202, note *s*; also, the independent jurisdiction of the dean of the Arches, the dean of Bocking and the dean of Croydon over exempt parishes. Cripps, *Law relating to the Church* Ed. 1886, p. 99.—On the jurisdiction of the dean of Norwich down to the reformation cf. Hudson (for Selden Society, 1892), *Leet jurisdiction in the City of Norwich*, Introduction p. xci.

APPENDIX.

I. Ordinance of William I touching the competence of ecclesiastical courts.[a]

Willelmus, gratia Dei Rex Anglorum, R. Bainardo et G. de Magnavilla et P. de Valoines ceterisque meis fidelibus de Essex et de Hertfordschire et de Middelsex,[1] *salutem.*

§ 1. *Sciatis vos omnes et ceteri mei fideles, qui in Anglia manent, quod episcopales leges, quae non bene nec secundum sanctorum canonum praecepta usque ad mea tempora in regno Anglorum fuerunt, communi concilio et consilio archiepiscoporum et episcoporum et abbatum et omnium principum regni mei emendandas judicavi.*

§ 2. *Propterea mando et regia auctoritate praecipio, ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundret placita teneant, nec causam, quae ad regimen animarum pertinet, ad judicium secularium hominum adducant, sed quicunque secundum episcopales leges de quacumque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc episcopus elegerit vel nominaverit, veniat, ibique de causa vel culpa sua respondeat, et non secundum hundret, sed secundum canones et episcopales leges, rectum Deo et episcopo suo faciat.*

§ 3. *Si vero aliquis per superbiam elatus ad justitiam episcopalem venire contempserit vel noluerit, vocetur semel, secundo, et tertio; quodsi nec sic ad emendationem venerit, excommunicetur; et si opus fuerit ad hoc vindicandum, fortitudo et justitia regis vel vicecomitis adhibeatur. Ille autem qui vocatus ad justitiam episcopi venire noluerit, pro unaquaque vocatione legem episcopalem emendabit.*

§ 4. *Hoc etiam defendo et mea auctoritate interdico, ne ullus vicecomes aut praepositus seu minister regis, nec aliquis laicus homo, de legibus, quae ad episcopum pertinent, se intromittat, nec aliquis laicus homo alium hominem sine justitia episcopi ad judicium adducat. Judicium vero in nullo loco*

[1] Another MS. has also been preserved. The heading therein runs: *W., gratia Dei Rex Angliae, comitibus, vicecomitibus et omnibus Francigenis et Anglis, qui in episcopatu Remegii episcopi terras habent, salutem.*—In the middle of the thirteenth century there was also known an Anglo-Saxon form of the document printed in the text. Liebermann in *The Athenaeum*, Sept. 1893, p. 322.

[a] Printed after Schmid, *Gesetze der Angelsachsen*, p. 357. Spelman, who only knew the form the heading of which is given in note 1, supposes (*Conc.* II, 15) that the ordinance was issued *circ.* 1085, because it is *inter privilegia Episc. Lincoln. postquam translatus erat Episcopatus;* Hardy, *Syllabus to Rymer*, also assigns it to the year 1085. An earlier date (say, soon after the appointment of Lanfranc, 1070) is supported by the words *usque ad mea tempora* in § 1; moreover, the provision printed in § 60, note 2, if really proceeding from a council of Winchester in 1076, presupposes an earlier date, in that it implies that William's ordinance had already been issued; perhaps the letter printed in § 60, note 83 also points to a time before 1080.

portetur, nisi in episcopali sede, aut in illo loco, quem ad hoc episcopus constituerit.

II. Charter of Stephen, 1136.[a]

Ego Stephanus Dei gratia assensu cleri et populi in regem Anglorum electus, et a Willelmo Cantuariensi archiepiscopo et sanctae Romanae ecclesiae legato consecratus, et ab Innocentio sancte romane sedis pontifice confirmatus, respectu et amore Dei sanctam ecclesiam liberam esse concedo et debitam reverentiam illi confirmo.

Nihil me in ecclesia vel rebus ecclesiasticis Simoniace acturum, vel permissurum esse promitto. Ecclesiasticarum personarum et omnium clericorum, et rerum eorum justitiam et potestatem et distributionem bonorum[1] *ecclesiasticorum in manu episcoporum esse perhibeo et confirmo. Dignitates ecclesiarum privilegiis earum confirmatas, et consuetudines earum antiquo tenore habitas, inviolate manere statuo et concedo. Omnes ecclesiarum possessiones et tenuras quas die illa habuerunt qua Willelmus rex avus meus fuit vivus et mortuus, sine omni calumniantium reclamatione, eis liberas et absolutas esse concedo. Si quid vero de habitis vel possessis ante mortem ejusdem regis, quibus modo careat ecclesia, deinceps repetierit, indulgentiae et dispensationi meae, vel restituendum vel discutiendum reservo. Quaecunque vero post mortem ipsius regis liberalitate regum vel largitione principum, oblatione vel comparatione, vel qualibet transmutatione fidelium eis collata sunt, confirmo. Pacem et justitiam me in omnibus facturum, et pro posse meo conservaturum eis promitto.*

Forestas quas Willelmus avus meus et Willelmus avunculus meus instituerunt et habuerunt, mihi reservo. Ceteras omnes quas rex Henricus superaddidit ecclesiis et regno quietas reddo et concedo.

Si quis episcopus vel abbas vel alia ecclesiastica persona ante mortem suam rationabiliter sua distribuerit vel distribuenda statuerit, firmum manere concedo. Si vero morte praeoccupatus fuerit, pro salute animae ejus ecclesiae consilio eadem fiat distributio. Dum vero sedes propriis pastoribus vacuae fuerint, ipsas et earum possessiones omnes in manu et custodia clericorum vel proborum hominum ejusdem ecclesiae committam, donec pastor canonice substituatur.

Omnes exactiones et injustitias et mescheningas, sive per vicecomites vel per alios quoslibet male inductas, funditus exstirpo.

Bonas leges et antiquas et justas consuetudines, in murdris et placitis et aliis causis, observabo, et observari praecipio, et constituo. Haec omnia concedo et confirmo salva regia et justa dignitate mea.

Testibus . . .

Apud Oxeneford., anno ab Incarnatione Domini 1136, *sed regni mei primo.*

III. Charter of Henry II, 1154.[b]

Henricus dei gracia Rex Anglie, Dux Normannie et Aquitannie et Comes Andegavie, omnibus Comitibus, Baronibus et fidelibus suis francis et Anglicis salutem. Sciatis me ad honorem dei et sancte ecclesie et pro communi emendacione tocius Regni mei concessisse et reddidisse et presenti carta mea confirmasse deo et sancte ecclesie et omnibus Comitibus et Baronibus et omnibus hominibus meis omnes concessiones et donaciones et libertates et liberas consuetudines quas Rex Henricus avus meus eis dedit et concessit. Similiter eciam omnes malas consuetudines quas ipse delevit et remisit, ego remitto et deleri concedo pro me et heredibus meis.

Quare volo et firmiter praecipio quod sancta ecclesia et omnes Comites et

[1] Another MS.: *honorum.*

[a] Printed from Stubbs, *Select Charters.*
[b] From *Statutes of the Realm, Charters*, p. 4.

Barones et omnes mei homines, omnes illas consuetudines et donaciones et libertates et liberas consuetudines habeant et teneant libere et quiete, bene et in pace et integre de me et heredibus meis, sibi et heredibus suis adeo libere et quiete et plenarie in omnibus sicut Rex Henricus avus meus eis dedit et concessit et carta sua confirmavit. Teste Ricardo de Luci apud Westmonasterium.

IV. Constitutions of Clarendon, 1164.[a]

Anno ab Incarnatione Domini millesimo centesimo sexagesimo quarto, papatus Alexandri anno quarto, illustrissimi regis Anglorum Henrici secundi anno decimo, in praesentia ejusdem regis facta est recordatio et recognitio cujusdam partis consuetudinum, et libertatum, et dignitatum antecessorum suorum, videlicet regis Henrici avi sui et aliorum, quae observari et teneri debent in regno. Et propter dissensiones et discordias quae emerserant inter clerum et justitias domini regis, et barones regni, de consuetudinibus et dignitatibus regni, facta est ista recognitio coram archiepiscopis et episcopis et clero, et comitibus et baronibus et proceribus regni. Et easdem consuetudines, recognitas per archiepiscopos et episcopos et comites et barones, et per nobiliores et antiquiores regni, Thomas Cantuariensis archiepiscopus, et Rogerus Eboracensis archiepiscopus, et Gilebertus Londoniensis episcopus, et Henricus Wintoniensis episcopus, et Nigellus Eliensis episcopus, et Willelmus Norwicensis episcopus, et Robertus Lincolniensis episcopus, et Hilarius Cicestrensis episcopus, et Jocelinus Sarisberiensis episcopus, et Ricardus Cestrensis episcopus, et Bartholomeus Exoniensis episcopus, et Robertus Herefordensis episcopus, et David Menevensis episcopus, et Rogerus Wigornensis electus, concesserunt, et in verbo veritatis viva voce firmiter promiserunt tenendas et observandas domino regi, et haeredibus suis, bona fide, et absque malo ingenio, praesentibus istis:

Roberto comite Leghecestriae.
Reginaldo comite Cornubiae.
Conano comite Britanniae.
Ioanne comite de Augo.
Rogerio comite de Clare.
Comite Gaufrido de Mandevile.
Hugone comite Cestriae.
Willelmo comite de Arundel.
Comite Patricio.
Matthaeo de Herefordia.
Waltero de Meduana.
Manasser Biseth dapifero.
Willelmo Maleth.
Willelmo de Curci.
Roberto de Dunestavilla.
Jocelino de Baillolio.
Willelmo de Lanvalis.
Willelmo de Caisneto.
Willelmo comite de Ferrariis.

Ricardo de Luci.
Reinaldo de Sancto Walerico.
Rogerio Bigot.
Reinaldo de Warenne.
Richerio de Aquila.
Wilhelmo de Braosa.
Ricardo de Camvilla.
Nigello de Mowbray.
Simone de Bello-Campo.
Humfrido de Boun.
Gaufrido de Veir.
Willelmo de Hastinga.
Hugone de Moravilla.
Alano de Nevill.
Simone filio Petri.
Willelmo Malduit camerario.
Ioanne Malduit.
Ioanne Marescallo.
Petro de Mara.

Et multis aliis proceribus et nobilibus regni, tam clericis quam laicis.

Consuetudinum vero et dignitatum recognitarum quaedam pars praesenti scripto continentur. Cujus partis capitula haec sunt.

Hae sunt avitae leges, quas Henricus rex Angliae petiit sibi confirmari a beato Thoma martyre.

1. *De advocatione et praesentatione ecclesiarum si controversia emerserit inter laicos, vel inter clericos et laicos, vel inter clericos, in curia domini regis tractetur et terminetur.*

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[a] From *Materials for the History of Becket* (*Rer. Brit. Scr.* No. 67) V, 71, where the various readings are given.—Of these constitutions the pope rejected 1, 3, 4, 5, 7, 8, 9, 10, 12, 15. Cf. *Materials, l.c.*

2. *Ecclesiae de feudo domini regis non possunt in perpetuum dari absque assensu et concessione ipsius.*

3. *Clerici retati et accusati de quacumque re, summoniti a justitia regis, venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiae regis quod sit ibi respondendum, et in curia ecclesiastica unde videbitur quod ibidem sit respondendum. Ita quod justitia regis mittet in curiam sanctae ecclesiae ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de caetero eum ecclesia tueri.*

4. *Archiepiscopis, episcopis, et personis regni*[1] *non licet exire de regno absque licentia domini regis. Et si exierint, si domino regi placuerit, assecurabunt quod nec in eundo nec in moram faciendo nec in redeundo perquirent malum vel damnum domino regi vel regno.*

5. *Excommunicati non debent dare vadium ad remanens,*[2] *nec praestare juramentum, sed tantum vadium et plegium standi judicio ecclesiae, ut absolvantur.*[3]

6. *Laici non debent accusari nisi per certos et legales accusatores et testes in praesentia episcopi, ita quod archidiaconus non perdat jus suum, nec quidquam quod inde habere debeat. Et si tales fuerint qui culpantur, quod non velit vel non audeat aliquis eos accusare, vicecomes requisitus ab episcopo faciet jurare duodecim legales homines de visneto seu de villa coram episcopo, quod inde veritatem secundum conscientiam suam manifestabunt.*

7. *Nullus qui de rege teneat in capite, nec aliquis dominicorum ministrorum ejus excommunicetur, nec terrae alicujus eorum sub interdicto ponantur, nisi prius dominus rex, si in terra fuerit, conveniatur, vel justitia regis si fuerit extra regnum, ut rectum de ipso faciat, et ita ut quod pertinebit ad curiam regiam ibidem terminetur, et de eo quod spectabit ad ecclesiasticam curiam, ad eandem mittatur ut ibidem terminetur.*

8. *De appellationibus, si emerserint, ab archidiacono debent procedere ad episcopum, et ab episcopo ad archiepiscopum. Et si archiepiscopus defuerit* (another MS.: *defecerit*) *in justitia exhibenda, ad dominum regem perveniendum est postremo ut praecepto ipsius in curia archiepiscopi controversia terminetur, ita quod non debeat ulterius procedere absque assensu domini regis.*

9. *Si calumnia emerserit inter clericum et laicum vel inter laicum et clericum, de ullo tenemento, quod clericus attrahere velit ad eleemosynam,*[4] *laicus vero ad laicum feudum, recognitione duodecim legalium hominum per capitalis justitiae regis considerationem terminabitur, utrum tenementum sit pertinens ad eleemosynam sive ad feudum laicum, coram ipsa justitia regis. Et si recognitum fuerit ad eleemosynam pertinere, placitum erit in curia ecclesiastica; si vero ad laicum feudum, nisi ambo de eodem episcopo vel barone advocaverint, in curia regis erit placitum. Sed si uterque advocaverit de feudo illo eundem episcopum vel baronem, erit placitum in curia ipsius; ita quod propter factam recognitionem saisinam*[5] *non amittat qui prius saisitus fuerat, donec per placitum dirationatum fuerit.*

10. *Qui de civitate, vel castello, vel burgo, vel dominico manerio domini regis fuerit, si ab archidiacono vel episcopo super aliquo delicto citatus fuerit, unde debeat eisdem respondere, et ad citationes eorum satisfacere noluerit, bene licet eum sub interdicto ponere; sed non debet excommunicari, priusquam*

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[1] Hefele, *Konziliengeschichte* § 625, 2nd Ed. vol. V pp. 625 ff., translates here and in other passages of the constitutions *personae regni* by *Personen, welche ein Reichslehn haben.* But it is improbable that in the present article *personae regni* should include secular persons, as the constitutions were only intended to regulate the rights of spiritual persons. Cf. below, notes 7 and 10.

[2] *I.e.* for future good behaviour.

[3] The sense of the article is that *absolutio* must be granted as soon as security for appearing before the ecclesiastical court is given. The consequence thereof is that the right to arrest ceases forthwith.

[4] Cf. § 21, note 36.

[5] *I.e.* seysin.

capitalis minister domini regis villae illius conveniatur, ut justiciet eum ad satisfactionem venire. Et si minister regis inde defecerit, ipse erit in misericordia[6] *domini regis. Et exinde poterit episcopus accusatum ecclesiastica justitia coercere.*

11. *Archiepiscopi, episcopi, et universae personae regni,*[7] *qui de rege tenent in capite, et habent possessiones suas de domino rege sicut baroniam, et inde respondent justitiis et ministris regis, et sequuntur et faciunt omnes rectitudines regias et consuetudines, sicut barones caeteri debent interesse judiciis curiae domini regis cum baronibus, usque perveniatur in judicio ad diminutionem membrorum, vel ad mortem.*

12. *Cum vacaverit archiepiscopatus, vel episcopatus, vel abbatia, vel prioratus de dominio regis, debet esse in manu ipsius, et inde percipiet omnes reditus et exitus, sicut dominicos. Et cum ventum fuerit ad consulendum ecclesiae,*[8] *debet dominus rex mandare potiores personas ecclesiae,*[9] *et in capella ipsius domini regis debet fieri electio, assensu domini regis, et consilio personarum regni*[10] *quas ad hoc faciendum vocaverit. Et ibidem faciet electus homagium et fidelitatem domino regi, sicut ligio domino, de vita sua et de membris, et de honore suo terreno, salvo ordine suo, priusquam consecratus sit.*

13. *Si quisquam de proceribus regni defortiaverit*[11] *archiepiscopo vel episcopo vel archidiacono de se vel de suis justitiam exhibere, dominus rex debet eos justitiare. Et si forte aliquis defortiaret domino regi rectitudinem suam, archiepiscopi, episcopi, et archidiaconi debent eum justitiare, ut regi satisfaciat.*

14. *Catalla eorum qui sunt in forisfacto regis non detineat ecclesia vel coemeterium contra justitiam regis: quia ipsius regis sunt, sive in ecclesiis, sive extra fuerint inventa.*

15. *Placita de debitis, quae fide interposita debentur, vel absque interpositione fidei, sint in justitia regis.*

16. *Filii rusticorum non debent ordinari absque assensu domini de cujus terra nati esse dignoscuntur.*

Facta est autem praedictarum consuetudinum et dignitatum regiarum recordatio ab archiepiscopis, episcopis, comitibus, baronibus, nobilioribus, et antiquioribus regni, apud Clarendunam, quarto die ante Purificationem Sanctae Mariae [perpetuae] virginis, domino Henrico filio regis cum patre suo domino rege praesente.

Sunt autem et aliae multae et magnae consuetudines et dignitates sanctae matris ecclesiae, et domini regis et baronum regni, quae in hoc scripto non continentur, quae salvae sine sanctae ecclesiae et domino regi et haeredibus suis et baronibus regni, et in perpetuum inviolabiliter observentur.

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[6] Subject to fine at the king's discretion.

[7] That the term *personae regni* does not here include secular persons is supported by *sicut barones caeteri*. The addition *qui de rege tenent in capite* seems to argue that without such addition the words would have a wider sense. On the other hand it is hardly to be assumed that *personae regni* has here the restricted meaning of parsons, parish priests (cf. § 44, note 10). See notes 1 and 10.

[8] To care for the vacant church.

[9] The chapter of the special church in question.

[10] *Personae regni* here, probably, generally 'spiritual and temporal magnates.' But possibly in accordance with the usage in article 11 to be restricted to the former. Cf. above, notes 1 and 7.

[11] *I.e.* resist by force.

V. Documents touching the submission of John to the pope's suzerainty, 1213.*

1. Conveyance of the kingdom to the pope.

Johannes, Dei gratia, Rex Anglie, dominus Ibernie, dux Normannie, et Aquitanie, comes Andegavie, omnibus Christi fidelibus praesentem cartam inspecturis, salutem.

Universitati vestre per hanc cartam nostram sigillo nostro munitam volumus esse notum, quia cum Deum et matrem nostram sanctam ecclesiam offenderimus in multis, et proinde Divina misericordia plurimum indigere noscamur, nec quid digne offerre possimus, pro satisfactione Deo et ecclesie debita facienda, nisi nos ipsos et regna nostra humiliemus.

Volentes nos ipsos humiliare pro illo, qui se pro nobis humiliavit usque ad mortem, gratia Sancti Spiritus inspirante, non vi inducti nec timore coacti, sed nostra bona spontaneaque voluntate, ac communi consilio baronum nostrorum, offerimus et libere concedimus Deo et sanctis apostolis ejus Petro et Paulo, et sancte Romane ecclesie matri nostre, ac domino nostro Pape Innocentio ejusque catholicis successoribus, totum regnum Anglie et totum regnum Ibernie, cum omni jure et pertinenciis suis, pro remissione peccatorum nostrorum et totius generis nostri, tam pro vivis quam defunctis; et amodo illa a Deo et ecclesia Romana tanquam feodatarius recipientes et tenentes, in presentia prudentis viri Pandulphi, domini Pape subdiaconi et familiaris, fidelitatem exinde predicto domino nostro Pape Innocentio, ejusque catholicis successoribus et ecclesie Romane secundum subscriptam formam facimus et juramus, et homagium ligium in presentia domini Pape, si coram eo esse poterimus, eidem faciemus; successores et heredes nostros de uxore nostra in perpetuum obligantes, ut simili modo summo Pontifici, qui pro tempore fuerit, et ecclesie Romane, sine contradictione debeant fidelitatem prestare et homagium recognoscere.

Ad indicium autem hujus perpetue nostre obligationis et concessionis volumus et stabilimus, ut de propriis et specialibus redditibus predictorum regnorum nostrorum, pro omni servitio et consuetudine quod pro ipsis facere deberemus, salvo per omnia denario beati Petri, ecclesia Romana mille marcas sterlingorum percipiat annuatim, scilicet in festo sancti Michaelis quingentas marcas, et in Pascha quingentas marcas; septingentas, scilicet pro regno Anglie, et trecentas pro regno Ibernie; salvis nobis et heredibus nostris justiciis, libertatibus et regalibus nostris: quae omnia, sicut supradicta sunt, rata esse volentes perpetuo atque firma, obligamus nos et successores nostros, contra non venire.

Et si nos vel aliquis successorum nostrorum hoc attemptare presumpserit, quicunque fuerit, ille, nisi rite commonitus resipuerit, cadat a jure regni, et haec carta obligationis et concessionis nostre semper firma permaneat.

2. Oath of fealty.

Ego Johannes, Dei gratia, Rex Anglie, et dominus Ibernie ab hac hora inantea fidelis ero Deo et beato Petro et ecclesie Romane, ac domino meo Pape Innocentio, ejusque successoribus catholice intrantibus: non ero in facto, dicto, consensu, vel consilio, ut vitam perdant vel membra, vel mala captione capiantur. Eorum dampnum, si scivero, impediam, et removere faciam, si potero; alioquin quam citius potero, intimabo, vel tali persone dicam, quam eis credam pro certo dicturam. Consilium quod michi crediderint, per se vel per nuncios seu per literas suas, secretum tenebo; et ad eorum dampnum nulli pandam, me sciente. Patrimonium beati Petri, et specialiter regnum Anglie et regnum Ibernie, adjutor ero ad tenendum et defendendum contra omnes homines, pro posse meo. Sic Deus me adjuvet, et haec sancta Evangelia.

Teste meipso, apud domum Militie Templi, juxta Doveriam: coram (then come the names of the witnesses) . . . *XV° die Maii, anno regni nostri XIV°.*

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* Printed from Rymer, *Foedera* 4th Ed. I, 111, 112.

VI. John's charter, 21st November, 1214, touching elections of prelates.[a]

Johannes Dei gracia, Rex Anglie, Dominus Ybernie, Dux Normannie et Aquitannie, Comes Andegavie, Archiepiscopis, Episcopis, Comitibus, Baronibus, Militibus, Ballivis, et omnibus has litteras visuris vel audituris Salutem. Quoniam inter nos et venerabiles patres nostros Stephanum Cantuariensem Archiepiscopum, tocius Anglie Primatem, et Sancte Romane Ecclesie Cardinalem, Willelmum Londoniensem, Eustachium Elyensem, Egydium Herefordensem, Goscelinum Bathoniensem et Glastoniensem, et Hugonem Lincolniensem Episcopos, super dampnis et ablatis tempore Interdicti, per Dei graciam de mera et libera voluntate utriusque partis plene convenit: Volumus non solum eis quantum secundum Deum possumus satisfacere, verum eciam toti Ecclesie Anglicane salubriter et utiliter imperpetuum providere: Inde est quod qualiscunque consuetudo, temporibus nostris et predecessorum nostrorum hactenus in Ecclesia Anglicana fuerit observata, et quicquid juris nobis hactenus vendicaverimus in electionibus quorumcunque praelatorum, Nos ad peticionem ipsorum pro salute anime nostre et predecessorum ac successorum nostrorum regum Anglie liberaliter mera et spontanea voluntate de communi consensu Baronum nostrorum concessimus et constituimus et hac presenti Carta nostra confirmavimus; ut de cetero in universis et singulis ecclesiis et monasteriis cathedralibus et conventualibus tocius regni nostri Anglie libere sint imperpetuum electiones quorumcunque prelatorum majorum et minorum; salva nobis et heredibus nostris custodia ecclesiarum et monasteriorum vacancium que ad nos pertinent. Promittimus etiam quod nec impediemus, nec impediri permittemus per nostros nec procurabimus quin in singulis et universis ecclesiis et monasteriis memoratis postquam vacaverint prelature, quandocumque voluerint libere sibi praeficiant electores pastorem. Petita tamen prius a nobis et heredibus nostris licencia eligendi, quam non denegabimus, nec differemus. Et si forte, quod absit, denegaremus vel differremus, procedant nichilominus electores ad electionem canonicam faciendam; et similiter post celebratam eleccionem noster requiratur assensus, quem similiter non denegabimus, nisi aliquid racionabile proposuerimus et legitime probaverimus, propter quod non debeamus consentire. Quare volumus et firmiter inhibemus ne quis vacantibus Ecclesiis vel monasteriis contra hanc nostram concessionem et constitucionem in aliquo veniat vel venire presumat. Si quis vero contra hoc aliquo unquam tempore venerit, maledictionem omnipotentis Dei et nostram incurrat. Hiis Testibus . . . Data per manum Magistri Ricardi de Marisco, Cancellarii nostri, apud Novum Templum London., vicesimo primo die Novembris anno regni nostri sexto decimo.*

VII. Extract from the Magna Carta of 1215.[b 1]

Johannes Dei gratia rex Angliae, dominus Hyberniae, dux Normanniae et Aquitanniae, comes Andegaviae, archiepiscopis, episcopis, abbatibus, comiti-

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* *Praelati majores*, *i.e.* diocesan bishops and higher ecclesiastics, and abbots with episcopal rank; *praelati minores*, all other church officers with episcopal jurisdiction and the heads of exempt corporations. Richter, *Kirchenrecht* § 118.

[1] This charter was first confirmed, 12th Nov. 1216, by Henry III *per consilium etc.*, but with considerable omissions (cf. c 42 of the charter of 1216 in note 29). See more in Stubbs, *l.c.* 339 ff.

The second confirmation, probably in autumn 1217 (the document is undated) *de consilio etc.* contains further variations. Cf. Stubbs, *l.c.* pp. 344 ff.

The third confirmation, 11th Feb. 1225 (9 *Hen. III*), *spontanea et bona volun-*

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[a] From *Statutes of the Realm, Charters*, p. 5.

[b] After Stubbs, *Select Charters* 4th Ed. pp. 293 ff.

bus, baronibus, justiciariis, forestariis, vicecomitibus, praepositis, ministris et omnibus ballivis et fidelibus suis salutem. Sciatis nos intuitu Dei et pro salute animae nostrae et omnium antecessorum et haeredum nostrorum, ad honorem Dei et exaltationem sanctae ecclesiae, et emendationem regni nostri, per consilium venerabilium patrum nostrorum Stephani Cantuariensis archiepiscopi totius Angliae primatis et sanctae Romanae ecclesiae cardinalis, Henrici Dublinensis archiepiscopi, Willelmi Londoniensis, Petri Wintoniensis, Joscelini Bathoniensis et Glastoniensis, Hugonis Lincolniensis, Walteri Wigornensis, Willelmi Coventrensis, et Benedicti Roffensis episcoporum; magistri Pandulfi domini papae subdiaconi et familiaris, fratris Eymerici magistri militiae templi in Anglia; et nobilium virorum Willelmi Mariscalli comitis Penbrok, Willelmi comitis Saresberiae, Willelmi comitis Warenniae, Willelmi comitis Arundelliae, Alani de Galwaya constabularii Scottiae, Warini filii Geroldi, Petri filii Hereberti, Huberti de Burgo senescalli Pictaviae, Hugonis de Nevilla, Mathei filii Hereberti, Thomae Basset, Alani Basset, Philippi de Albiniaco, Roberti de Koppelay, Johannis Mariscalli, Johannis filii Hugonis et aliorum fidelium nostrorum.

1. *In primis concessisse Deo et hac praesenti carta nostra confirmasse, pro nobis et haeredibus nostris in perpetuum, quod Anglicana ecclesia libera sit, et habeat jura sua integra, et libertates suas illaesas; et ita volumus observari; quod apparet ex eo quod libertatem electionum, quae maxima et magis necessaria reputatur ecclesiae Anglicanae, mera et spontanea voluntate, ante discordiam inter nos et barones nostros motam, concessimus et carta nostra confirmavimus, et eam optinuimus a domino papa Innocentio tertio confirmari; quam et nos observabimus et ab haeredibus nostris in perpetuum bona fide volumus observari. Concessimus etiam omnibus liberis hominibus regni nostri, pro nobis et haeredibus nostris in perpetuum, omnes libertates subscriptas, habendas et tenendas, eis et haeredibus suis, de nobis et haeredibus nostris;*[2]

. . . . . .

5. *Custos* (the guardian of a minor) *autem, quamdiu custodiam terrae habuerit, sustentet domos, parcos, vivaria, stagna, molendina, et cetera ad terram illam pertinentia, de exitibus terrae ejusdem; et reddat haeredi, cum ad plenam aetatem pervenerit, terram suam totam instauratam de carrucis*[3] *et wainnagiis*[4] *secundum quod tempus wainnagii exiget et exitus terrae rationabiliter poterunt sustinere.*[5]

. . . . . .

7. *Vidua post mortem mariti sui statim et sine difficultate habeat maritagium*[6] *et haereditatem suam, nec aliquid det pro dote*[7] *sua, vel pro maritagio suo, vel haereditate sua quam haereditatem maritus suus et ipsa tenuerint die*

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tate nostra, agrees almost exactly with the charter of 1217. See Stubbs, *l.c.* pp. 353 f.

The fourth confirmation was in 1237, reference being made in it to the text as until then accepted. Stubbs, *l.c.* pp. 365 f. Nor was that text changed in any later confirmations. Cf. Gneist, *Engl. Verfassungsgeschichte* § 18, note * *.

[2] 1216 c 1: The wording is the same from *In primis* to *illaesas*, and from *Concessimus* to *nostris*. From *et ita* to *observari* is omitted.—1217 c 1: as in 1216.—1225 c 1: also as in 1216.

[3] =ploughs.

[4] =Properly the extent of land worked by the plough; in some cases (perhaps here) farming stock. Stubbs, glossary.

[5] 1216 c 5: The same from *Custos* to *carrucis*; then this ending: *et omnibus aliis rebus ad minus secundum quod illam recepit. Haec omnia observentur de custodiis archiepiscopatuum, episcopatuum, abbatiarum, prioratuum, ecclesiarum et dignitatum vacantium, excepto quod custodiae hujusmodi vendi non debent.*—1217 c 5: as in 1216. After *vacantium* is interpolated: *que ad nos pertinent.*—1225, as in 1217.

[6] On *maritagium* see § 60, near note 104.

[7] On *dos* see § 60, note 107.

obitus ipsius mariti, et maneat in domo mariti sui per quadraginta dies post mortem ipsius infra quos assignetur ei dos sua.[8]

. . . . . .

10. *Si quis mutuo ceperit aliquid a Judaeis, plus vel minus, et moriatur antequam debitum illud solvatur, debitum non usuret quamdiu haeres fuerit infra aetatem, de quocumque teneat; et si debitum illud inciderit in manus nostras, nos non capiemus nisi catallum contentum in carta.*[9]

11. *Et si quis moriatur, et debitum debeat Judaeis, uxor ejus habeat dotem suam, et nihil reddat de debito illo; et si liberi ipsius defuncti qui fuerint infra aetatem remanserint, provideantur eis necessaria secundum tenementum quod fuerit defuncti, et de residuo solvatur debitum, salvo servitio dominorum; simili modo fiat de debitis quae debentur aliis quam Judaeis.*[10]

12. *Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam, et ad haec non fiat nisi rationabile auxilium: simili modo fiat de auxiliis de civitate Londoniarum.*[11]

. . . . . .

14. *Et ad habendum commune consilium regni, de auxilio assidendo aliter quam in tribus casibus praedictis, vel de scutagio assidendo, summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigillatim per litteras nostras; et praeterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite; ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum; et in omnibus litteris illius summonitionis causam summonitionis exprimemus; et sic facta summonitione negotium ad diem assignatum procedat secundum consilium illorum qui praesentes fuerint, quamvis non omnes summoniti venerint.*[12]

15. *Nos non concedemus de cetero alicui quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum, et ad faciendum primogenitum filium suum militem, et ad primogenitam filiam suam semel maritandam, et ad haec non fiat nisi rationabile auxilium.*[13]

. . . . . .

18. *Recognitiones de nova dissaisina, de morte antecessoris, et de*

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[8] 1216 c 7: The same with the addition: *nisi prius ei fuerit assignata, vel nisi domus illa sit castrum; et si de castro recesserit, statim provideatur ei domus competens in qua possit honeste morari quousque dos sua ei assignetur secundum quod praedictum est.*—1217 c 7: as in 1215 from *Vidua* to *maneat*; then: *in capitali mesuagio mariti sui per quadraginta dies post obitum ipsius mariti sui, infra quos assignetur ei dos sua nisi prius fuerit ei assignata, vel nisi domus illa sit castrum, et si de castro . . .* (as in 1216, to) *praedictum est; et habeat rationabile estuverium* (fuel; in a wider sense, maintenance) *suum interim de communi. Assignetur autem ei pro dote sua tertia pars totius terrae mariti sui quae sua fuit in vita sua, nisi de minori dotata fuerit ad ostium ecclesiae.*—1225, as in 1217; but *tenuerunt* for *tenuerint*.

[9] 1216 omitted; not restored in later confirmations.—Cf. 20 *Hen. III* (1235/6) *Stat. Merton* c 5: *Similiter provisum est et a domino Rege concessum, quod de cetero non currant usure contra aliquem infra etatem existentem, a tempore mortis antecessoris sui, cujus heres ipse est, usque ad legitimam etatem suam. Ita tamen quod propter hoc non remaneat solucio debiti principalis simul cum usura ante mortem antecessoris sui cujus heres ipse est.*

[10] 1216 omitted; not restored in later confirmations.

[11] 1216 omitted; not restored in later confirmations.—In 1217 c 44 is the new provision: *Scutagium capiatur decetero sicut capi consuevit tempore Henrici Regis Avi nostri.* So in 1225.—A provision like that of 1215 was afterwards first made in 1297 (cf. § 4, note 97).

[12] 1216 omitted; in later confirmations not at first restored. Cf. note 11.

[13] 1216 omitted; not restored in later confirmations.

ultima praesentatione, non capiantur nisi in suis comitatibus et hoc modo; nos, vel si extra regnum fuerimus, capitalis justiciarius noster, mittemus duos justiciarios per unumquemque comitatum per quatuor vices in anno, qui, cum quatuor militibus cujuslibet comitatus electis per comitatum, capiant in comitatu et in die et loco comitatus assisas praedictas.[14]

19. *Et si in die comitatus assisae praedictae capi non possint, tot milites et libere tenentes remaneant de illis qui interfuerint comitatui die illo, per quos possint judicia sufficienter fieri, secundum quod negotium fuerit majus vel minus.*[15]

20. *Liber homo non amercietur pro parvo delicto, nisi secundum modum delicti; et pro magno delicto amercietur secundum magnitudinem delicti, salvo contenemento suo; et mercator eodem modo salva mercandisa sua; et villanus eodem modo amercietur salvo wainnagio suo, si inciderint in misericordiam nostram: et nulla praedictarum misericordiarum ponatur, nisi per sacramentum proborum hominum de visneto.*[16]

21. *Comites et barones non amercientur nisi per pares suos, et non nisi secundum modum delicti.*[17]

22. *Nullus clericus amercietur de laico tenemento suo, nisi secundum modum aliorum praedictorum, et non secundum quantitatem beneficii sui ecclesiastici.*[18]

23. *Si aliquis tenens de nobis laicum feodum moriatur, et vicecomes vel ballivus noster ostendat litteras nostras patentes de summonitione nostra de debito quod defunctus nobis debuit, liceat vicecomiti vel ballivo nostro attachiare et inbreviare catalla defuncti inventa in laico feodo, ad valentiam illius debiti, per visum legalium hominum, ita tamen quod nihil inde amoveatur, donec persolvatur nobis debitum quod clarum fuerit; et residuum relinquatur executoribus ad faciendum testamentum defuncti; et, si nihil nobis debeatur ab ipso, omnia catalla cedant defuncto,*[19] *salvis uxori ipsius et pueris rationabilibus partibus suis.*[20]

. . . . . .

27. *Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum et amicorum suorum, per visum eccle-*

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[14] 1216 c 13 the same.—1217 c 13: The words *et de ultima praesentatione* are omitted; otherwise the same wording as in 1216 down to *mittemus*; then: *Justiciarios per unumquemque comitatum semel in anno qui cum militibus comitatuum capiant in comitatibus assisas praedictas.*—1225, as in 1217; between *dissaisina* and *de morte antecessoris* the word *et* is inserted.

[15] 1216 c 14 the same. 1217, omitted; instead: c 14. *Et ea quae in illo adventu suo in comitatu per justitiarios praedictos ad dictas assisas capiendas missos terminari non possunt, per eosdem terminentur alibi in itinere suo, et ea quae per eosdem, propter difficultatem aliquorum articulorum, terminari non possunt, referantur ad justitiarios nostros de banco et ibi terminentur.* c 15. *Assisae de ultima praesentatione semper capiantur coram justitiariis de banco et ibi terminentur.* 1225, as in 1217 cc 14 and 15.

[16] 1216 c 15 the same; but at the end: *proborum et legalium hominum de visneto.*—1217 c 16 as in 1216 c 15, but with the words *alterius quam noster* inserted after *villanus.*—1225, as in 1217.

[17] So 1216 c 16, 1217 c 17, 1225.

[18] 1216 c 17 the same, but with omission of the words *de laico tenemento suo.* 1217 c 18 runs: *Nulla ecclesiastica persona amercietur secundum quantitatem beneficii sui ecclesiastici, sed secundum laicum contenementum suum et secundum quantitatem delicti.*—1225, as in 1217.

[19] *I.e.* they form the part of his movables which was at his free disposal.

[20] So 1216 c 20.—In the charter of 1217 c 22 the words *et pueris* are omitted; this is perhaps only a defect of the MS.—In 1225 c 18 the words *et pueris suis* are introduced. Cf. § 60, near note 117.

siae distribuantur, salvis unicuique debitis quae defunctus ei debebat.[21]

. . . . . .

38. *Nullus ballivus ponat de cetero aliquem ad legem*[22] *simplici loquela sua, sine testibus fidelibus ad hoc inductis.*[23]

. . . . . .

42. *Liceat unicuique de cetero exire de regno nostro, et redire, salvo et secure, per terram et per aquam, salva fide nostra, nisi tempore gwerrae per aliquod breve tempus, propter communem utilitatem regni, exceptis imprisonatis et utlagatis secundum legem regni, et gente de terra contra nos gwerrina, et mercatoribus de quibus fiat sicut praedictum est.*[24]

. . . . . .[25]

46. *Omnes barones qui fundaverunt abbatias, unde habent cartas regum Angliae, vel antiquam tenuram, habeant earum custodiam cum vacaverint, sicut habere debent.*[26]

. . . . . .[27]

60. *Omnes autem istas consuetudines praedictas et libertates quas nos concessimus in regno nostro tenendas quantum ad nos pertinet erga nostros, omnes de regno nostro, tam clerici quam laici, observent quantum ad se pertinet erga suos.*[28]

. . . . . .

63. *Quare volumus et firmiter praecipimus quod Anglicana ecclesia libera sit et quod homines in regno nostro habeant et teneant omnes praefatas libertates, jura, et concessiones, bene et in pace, libere et quiete, plene et integre, sibi et haeredibus suis, de nobis et haeredibus nostris, in omnibus rebus et locis, in perpetuum, sicut praedictum est. Juratum est autem tam ex parte nostra quam ex parte baronum, quod haec omnia supradicta bona fide et sine malo ingenio observabuntur. Testibus supradictis et multis aliis. Data per manum nostram in prato quod vocatur Runingmede, inter Windelesorum et Stanes, quinto decimo die Junii, anno regni nostri septimo decimo.*[29]

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[21] 1216 omitted; not restored in later confirmations. Cf. § 60, notes 124 ff.

[22] =ordeal (by water or fire).

[23] 1216 c 31 the same.—1217 c 34: *Nullus ballivus ponat de cetero aliquem ad legem manifestam nec ad juramentum* (to oath with compurgators) *simplici loquela sua, sine testibus fidelibus ad hoc inductis.*—1225, as in 1217; only instead of *nec, vel.*

[24] 1216 omitted, and not afterwards restored.

[25] There is a new provision in 1217 c 39: *Nullus liber homo de cetero det amplius alicui vel vendat de terra sua quam ut de residuo terrae suae possit sufficienter fieri domino feodi servitium ei debitum quod pertinet ad feodum illud.*—1225, the same.—[Cf. here Bracton, Book IV, tract. 1 c 9 § 1 (*Rer. Brit. Scr.* No. 70, III, 70, 76).]

[26] 1216 c 37 the same with the addition: *et sicut supra* [c 5, see above, note 5] *declaratum est.*—1217 c 40 runs: *Omnes patroni abbatiarum, qui habent cartas regum Angliae de advocatione vel antiquam tenuram vel possessionem, habeant earum custodiam* etc. to end, as in 1216.—1225, as in 1217.

[27] There is a new provision in 1217 c 43: *Non liceat alicui de cetero dare terram suam alicui domui religiosae ita quod illam resumat tenendam de eadem domo, nec liceat alicui domui religiosae terram alicuius sic accipere quod tradat eam illi a quo eam receperit tenendam. Si quis autem de cetero terram suam alicui domui religiosae sic dederit et super hoc convincatur, donum suum penitus cassetur et terra illa domino suo illius feodi incurratur.* (Cf. 1217 c 39; above, note 25.)—1225 the same.

[28] So 1216 c 41, 1217 c 45, 1225.

[29] 1216 omitted, and not afterwards restored.—In 1216 the end of the clause runs, c 42: *Quia vero quaedam capitula in priore continebantur quae gravia et dubitabilia videbantur, scilicet de scutagiis et auxiliis assidendis, de debitis Judaeorum et aliorum, et de libertate exeundi de regno nostro vel redeundi in*

VIII. *Statutum de Provisoribus*, 25 *Ed. III* (1350/1) st. 4.[a]

Come jadis, en le parlement de bone memoire Sire Edward Roi Dengleterre, Ael nostre Seigneur le Roi qore est, lan de son regne trentisme quint a Kardoil tenuz, oie la peticion mise devant le dit Ael et son conseil en le dit parlement par la communalte de son Roialme, contenant qe come seinte eglise Dengleterre estoit founde en estat de prelacie, deins le Roialme Dengleterre, par le dit Ael et ses progenitours, et Countes Barons et Nobles de son Roialme et lour ancestres, pur eux et le poeple enfourmer de la lei Dieu, et pur faire hospitalites aumoignes et autres oevres de charite es lieux ou les eglises feurent foundes pur les almes de foundours et de lour heirs et de touz Cristiens ; et certeins possessions, tant en feez terres et rentes come en avowesons qe se extendent a grande value, par les ditz foundours feurent assignez as prelatz et autres gentz de seinte eglise du dit Roialme, pur cele charge sustenir, et nomement des possessions qe feurent assignes as Erceveseges, Evesges, Abbes, Priours, Religious et autres gentz de seinte eglise, par les Rois du dit Roialme, Countes, Barons et autres Nobles de son Roialme, meismes les Rois, Countes, Barons et Nobles, come Seigneurs et avowes eussent et aver deussent la garde de tieles voidances, et les presentementz et collacions des benefices esteantz des tieles prelacies ; et les ditz Rois en temps passe soloient aver la greindre partie de lour conseils pur la salvacion du Roialme quant ils eneurent mester, de tiels prelatz et Clercs issint avances ; Le Pape de Rome, acrochant a lui la Seigneurie de tieles possessions et benefices, meismes les benefices dona et graunta as aliens qi unqes ne demeurerent el Roialme Dengleterre, et as Cardinalx qe y demeurer ne purroient, et as autres tant aliens come denzeins, autresi come il eust este patron ou avowe des dites dignites et benefices, come il ne feust de droit selonc la loi Dengleterre ; par les queux sils feussent soeffertz a peine demeuroit ascun benefice, en poi de temps, el dit Roialme qil ne seroit es meins daliens et denzeins, par vertue de tieles provisions contre la bone volunte et disposicion des foundours de meismes les benefices, et issint les eleccions des Erceveseges, Evesches, et autres Religious faudroient, et les almoignes, hospitalites et autres oevres de charite qe seroient faitz as ditz lieux seroient sustretes, le dit Ael et autres lais patrons en temps de tieles voidances perderoient lour presentementz, le dit conseil periroit, et biens sanz nombre seroient emportes hors du Roialme, en adnullacion del estat de seinte eglise dengleterre, et desheriteson du dit Ael, et des Countes Barons et nobles, et en offens et destruccion des lois et droitures de son Roialme, et grant damage de son poeple, et subversion del estat de tut son Roialme susdit, et contre la bone disposicion et volunte des primers foundours ; del assent des Countes, Barons, Nobles et tute la dite Communalte, a lour instante requeste, consideres les damages et grevances susdites en le dit plener parlement feust purveu ordine et establi qe les dites grevances, oppressions et damages, en meisme le Roialme des adonqes mes ne seroient soeffertz en ascun manere. Et ja monstre soit a notre Seigneur le Roi, en cest parlement tenuz a Westminster a les Octaves de la Purificacion de notre Dame, lan de son regne Dengleterre vintisme quint, et de France duszisme, par la greveuse pleinte de toute la commune de son

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regnum, et de forestis et forestariis, warennis et warennariis, et de consuetudinibus comitatuum et de ripariis et earum custodibus, placuit supradictis praelatis et magnatibus ea esse in respectu quousque plenius consilium haberimus, et tunc faciemus plenissime tam de hiis quam de aliis quae occurrerint emendanda, quae ad communem omnium utilitatem pertinuerint et pacem et statum nostrum et regni nostri. . . . This provision was omitted in 1217 and in the ensuing confirmations.—There is a new clause in 1217 c 46: *Salvis archiepiscopis, episcopis, abbatibus, prioribus, Templariis, Hospitalariis, comitibus, baronibus et omnibus aliis tam ecclesiasticis personis quam saecularibus, libertatibus et liberis consuetudinibus quas prius habuerunt.*—So in 1225.

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[a] After *Statutes of the Realm.*

Roialme qe les grevances et meschiefs susditz sabondent de temps en temps, a plus grant damage et destruccion de tut le Roialme, plus qe unqes ne firent ; cest assaver qore de novel notre seint piere le Pape, par procurement des clercs et autrement ad reservee et reserve de jour en autre a sa collacion, generalment et especialment, sibien Erceveschees, Eveschees, Abbeies, et Priories, come totes dignetes et autres benefices dengleterre, qe sont del avowerie de gentz de seinte eglise, et les donne auxibien as aliens come as denzeins, et prent de touz tiels benefices les primeres fruitz et autres profitz plusours ; et grande partie du tresor del Roialme si est emporte et despendu hors du Roialme, par les purchaceours de tieles graces ; et auxint, par tieles reservacions prives, plusours clercs avances en ceste Roialme par les veroies patrons, qe ont tenuz lour avancementz par long temps pesiblement, sont sodeinement ostes ; sur quoi la dite Communalte ad prie a notre Seigneur le Roi qe desicome le droit de la Corone Dengleterre et la loi du dite Roialme sont tieles, qe sur meschiefs et damages qe si aviegnont a son Roialme il doit et est tenuz par son serement, del acord de son poeple en son parlement, faire en remede et lei, en ostant les meschiefs et damages qensi avignont, qe lui pleise de ce ordiner remede : Notre Seigneur le Roi, veiant les meschiefs et damages susnomes et eant regard al dit estatut fait en temps son dit Ael, et a les causes contenues en ycele, le quel estatut tient touz jours sa force et ne feust unqes defait ne anulli en nul point, et partant est il tenuz par son serement del faire garder come la loi de son Roialme, coment qe par soeffrance et negligence ad este puis attempte a contraire ; et auxint eant regard a les grevouses pleintes a lui faites par son poeple, en ses divers parlementz cea enarere tenuz, voillantz les tresgrantz damages et meschiefs qe sont avenuz, et viegnont de jour en autre a la Eglise Dengleterre par la dite cause remede ent ordiner ; par assent de touz les grantz et la Communalte de son dit Roialme, Al honour de Dieu et profit de la dite eglise Dengleterre et de tut son Roialme, ad ordine et establi,

qe les franches eleccions des Erceveschees, Eveschees, et tutes autres dignites et benefices electifs en Engleterre, se tiegnent desore, en manere come eles feurent grantes par les progenitours notre dit seigneur le Roi, et par les auncestres dautres Seigneurs foundes. Et qe touz prelatz, et autres gentz de seinte eglise qi ont avowesons de quecomqes benefices des douns notre seigneur le Roi et de ses progenitours, ou dautres Seigneurs et donours, pur faire divines services et autres charges ent ordines, eient lour collacions et presentementz franchement en manere come ils estoient feffes par lour donours. Et en cas qe dascune Erceveschee, Eveschee, dignite ou autre quecunqe benefice, soit reservacion, collacion, ou provision faite par la court de Rome, en destourbance des eleccions, collacions ou presentacions susnomes, qe a meisme les temps des voidances, qe tieles reservacions collacions et provisions deusent prendre effect, qe a meisme la voidance notre Seigneur le Roi et ses heirs eient et enjoicent pur cele foitz les collacions as Erceveschees, Eveschees et autres dignites electives, qe sont de savowerie, autieles come ses progenitours avoient avant qe franche eleccion feust graunte, desicome les eleccions feurent primes grantez, par les progenitours le Roi sur certeines forme et condicion, come a demander du Roi conge de eslir, et puis apres la eleccion daver son assent roial, et nemye en autre manere, les queles condicions nyent gardez, la chose doit par reson resortir a sa primere nature : et qe si, dascune Meson de Religion del avowerie le Roi, soit tiele reservacion, collacion, ou provision faite, en destourbance de franche eleccion, eit notre seigneur le Roi et ses heirs a cele foitz la collacion, a doner cele dignite a persone covenable. Et en cas qe reservacion, collacion ou provision soit faite a la Court de Rome, de nule Esglise, provende, ou autre benefice qe sont del avowerie des genz de seinte esglise, dont le Roi est avowe paramount inmediat, qe a mesme le temps de voidance, a quel temps la reservacion collacion ou provision deusent prendre effeit, come desus est dit, qe le Roi et ses heirs de ce eient le presentement, ou collacion a cele foitz ; et issint de temps en temps a totes les foitz qe tieles gentz de seinte eglise seront destourbes de lour presentementz ou collacions par tieles reservacions collacions ou provisions come desus est dit ; Sauvee a eux le droit de lour avowesons et presentementz quant nul collacion ou provision de la Court de

Rome ent ne soit faite, ou qe les dites gentz de seinte eglise osent et vuillent a meismes les benefices presenter ou collacion faire, et lour presentees puissent leffect de lour collacions et presentementz enjoier: et en meisme la manere eit chescun autre Seigneur de quel condicion qil soit, les presentementz ou collacions a les mesons de religion qe sont de savowerie, et as benefices de seinte eglise qe sont apurtenantz a meismes les mesons. Et si tiels avowes ne presentent point a tieles benefices, deinz le demy an apres tieles voidances, ne levesqe de lieu ne la donne par laps de temps deinz un mois apres le demy an, qe adonqes le Roi eit ent les presentementz et collacions, come il ad dautres de savowerie demeisne.

Et en cas qe les presentes le Roi, ou les presentes dautres patrons de seinte eglise, ou de lour avowes, ou ceux as queux le Roi ou tielx patrons ou avowes susditz averont done benefices apurtenantz a lour presentementz ou collacions, soient destourbez par tiels provisours, issint qils ne puissent avoir possession de tieles benefices, par vertue des presentementz et collacions issint a eux faitz, ou qe ceux qe sont en possessions des tiels benefices soient empesches sur lour dites possessions par tielx provisours, adonqes soient les ditz provisours et lour procuratours, executours et notaires attaches par lour corps, et menes en response, et sils soient convictz demoergent en prisone sanz estre lesse a meinprise, en baille, ou autrement delivres, tanqils averont fait fin et redempcion au Roi a sa volente, et gree a la partie qe se sentera greve. Et nient meins, avant qils soient delivres facent pleine renunciacion, et troevent sufficeante seurete qils nattempteront tiele chose en temps avenir, ne nul proces sueront par eux ne par autre devers nuly en la dite Court de Rome, ne nule part aillours, pur nules tieles emprisonementz ou renunciacions, ne nule autre chose dependant de eux. Et en cas qe tielx provisours, procuratours, executours et notaires ne soient trovez, qe lexigende courge devers eux par due proces, et qe briefs issent de prendre lour corps quel part qils soient trovez. auxibien a la suite le Roi come de partie, et qen le mesne temps le Roi eit les profitz de tielx benefices, issint ocupez par tielx provisours, forspris Abbeies, Priories, et autres mesons qont college ou Covent; et en tieles mesons eient les Covent et colleges les profitz, sauvant totefoitz a notre seigneur le Roi et as autres Seigneurs lour aunciene droit. Et eit cest estatut lieu autresibien de reservacions collacions et provisions faites et grantes en temps passe, devers touz ceaux qe ne sont unqore adept corporele possession des benefices, a eux grauntes, par meismes les recervacions, collacions et provisions, come devers toux autres en temps avenir. Et doit cest Estatut tenir lieu commenceant a les octaves susditz.

IX. Extract from Edward IV's Charter, 2nd November, 1462.[a]

. . . *quod de cetero, nullus justiciarius, vicecomes, commissarius, escaëtor, coronator, ballivus, aliusve officiarius, aut minister noster vel heredum nostrorum aut aliorum, qui curias legales ex concessione nostra aut praedecessorum nostrorum, aliave auctoritate tenent, inquirat seu inquiri faciat de excessibus, feloniis, raptibus mulierum, proditionibus aliisve quibuscumque transgressionibus perpetratis seu perpetrandis, seu sic dicta perpetrata fuisse per aliquem vel aliquos archiepiscopum vel archiepiscopos, episcopum vel episcopos, abbatem vel abbates, priorem vel priores, decanum vel decanos, archidiaconum vel archidiaconos, officiarios, commissarios, rectores, vicarios, seu eorum successores, presbyteros, capellanos et clericos quoscumque infra sacros ordines constitutos, aut religiosas personas supradictas praesentes vel futuras.*

Et si contingat aliquam duodenam, quaestamve, aliquem vel aliquos hujusmodi archiepiscopos, episcopos, praelatos, abbates, priores, decanos, archidiaconos, officiarios, commissarios, rectores, vicarios et eorum successores, presbyteros, capellanos vel aliquos clericos in sacris ordinibus constitutos de cetero indictare, praesentare, accusare vel impetere, quod tunc ipse vel ipsi,

[a] Printed after Harduin, *Acta Conciliorum etc.* IX, 1470. Also printed in Wilkins, *Concilia* III, 583 and Rymer, *Foedera* 3rd Ed. V, Pt. II, p. 111.—This charter was confirmed by Richard III, 23rd Feb. 1484. The deed of confirmation is in Wilkins, *Conc.* III, 616.

justiciarius, vicecomes, escaëtor, coronator, praepositus, ballivus, minister, aliusve officiarius, statim post receptionem hujusmodi indictationis, praesentationis, accusationis, impetitionisve, ipsam indictationem, accusationem, praesentationem, vel impetitionem absque arrestatione, seu captione, incarcerationeve clerici vel clericorum hujusmodi indictatorum, praesentatorum, accusatorumve, impetitorum bonorum aut catallorum, eorumdem, archiepiscopis, episcopis ac singulis praelatis, abbatibus, prioribus, decanis, archidiaconis, qui in hujusmodi indictatis ordinariam habent jurisdictionem transmittant. Et quod liceat ipsis Ordinariis contra hujusmodi sic indictatos, praesentatos, accusatos, impetitos, judicialiter secundum jura ecclesiastica procedere, ipsam quoque causam seu causas cum eorum consequentibus, dependentibus, emergentibus, incidentibus, et annexis finaliter decidere; licebit etiam ipsis archiepiscopis etc. . . . absque hujusmodi aliqua indictatione, praesentatione, accusatione vel impetitione, ab hujusmodi justiciariis etc. . . . sibi transmissis, indictationes, praesentationes, accusationes, impetitionesve privatas hujusmodi clericorum in sacris ordinibus constitutorum; necnon religiosarum personarum, quarumcumque sibi subditarum recipere et super hujusmodi praesentatione, indictatione, accusatione, detectione, vel impetitione, inquisitiones facere, ulteriusque secundum jura ecclesiastica usque ad finem negotii procedere et id finaliter terminare cum effectu . . .

. . . Et si quis justiciariorum, vicecomitum, ballivorum, escaëtorum, coronatorum, aut ministrorum nostrorum seu aliorum quemcumque vere vel praetense malefactores arrestaverint, attachiaverint, tenuerint, incarceraverint vel custodierint; et sic arrestatus, tentus, attachiatus, incarceratus vel custoditus se clericum dicens ad Ordinarium loci mitti vel remitti petat, sive Ordinarius loci ipsum petat aut repetat, statim et indilate, et etiam ante causae cognitionem seu examinationem de clericatu, quia de praetensa spirituali fit quaestio, ad ecclesiasticum suum judicem, vocato tamen judice saeculari aut alio ad cujus interesse dubitationis illius pertineat decisio. Et si per judicem ecclesiasticum clericus reperiatur, sub jurisdictione ecclesiastica judicandus remaneat; alias autem ad judicem sive curiam temporalem omnino restituatur.

. . . Insuper concessimus de gratia nostra speciali, quod nullus Ordinarius, judexve spiritualis, sive aliquis alius causam suam prosequens in curia ecclesiastica vel spirituali, aliquo modo gravetur, inquietetur, vexetur, aut alio modo molestetur per breve de Praemunire facias, pro prosecutione seu decisione alicujus causae in curia spirituali determinandae, et infra regnum inchoatae. Et quod nec judex nec pars prosequens causam, vel pars defendens, neque earum partium consiliarii, in aliquam poenam in statuto de Praemunire facias contentam, incidat. Proviso semper, quod haec nostra praesens concessio ad impetrantes beneficia vel exemptiones, aut capacitates cum portione monachali nullatenus extendatur.

. . . Et hoc absque feodo inde ad opus nostrum capiendo seu solvendo . . .

X. 25 *Hen. VIII* (1533/4) c 20 ss 3 and 4 touching the mode of filling vacant sees.[a]

s 3. *And further more be it ordyned and established by the auctorytie aforsed, that at every advoydaunce of every Archibishopriche or Bishopriche within this Realme or in any other the Kynges Domynyons, the Kynge our soveran Lorde hys heires and successours may graunt unto the Pryor and Convent or the Deane and Chapytour of the Cathedrall Churches or Monasteries where the See of souch Archibishopriche or Bishopriche shall happen to be voyde, a lycence under the greate seale as of old tyme hath byn accustomed to procede to eleccion of an Archibishopp or Bishopp of the See soo being voyde, with a letter myssyve conteynyng the name of the persone which they shall electe and chose; By vertue of which licence the seid Deane*

[a] After *Statutes of the Realm.*

and Chapitour or Pryor and Covent, to whome any suche licence and letters myssyves shalbe directed, shall with all spede and seleritie in due forme electe and chose the seid person named in the seid letters myssyves to the dignitie and office of the Archebishopriche or Bishopriche soo being voyde, and none other; and yf they doo or deferre or delay theire eleccion above XII dayes next after suche licence and letters myssyves to theym delyvered, that then for every suche defaute the Kynges Highnes hys heires and successours at theire libertie and pleasure shall nomynate and present, by theire letters patentes under theire greate seale, suche a person to the seid office and dignytie soo beinge voyde as they shall thynke abyll and convenyent for the same. And that every such nomynacion and presentment to be made by the Kynges Highnes hys heires and successours, yf it be to the office and dignytie of a Bishopp shalbe made to the Archebisshopp and Metropolitane of the provynce where the See of the same Bishopriche ys voyde, yf the See of the seid Archibishoprich be then full and not voyde; and yf it be voyde then to be made to suche Archebishopp or Metropolitane within this Realme or in any the Kynges Domynyons as shall please the Kynges Highnes hys heires or successours: And yf any such nomynacion or presentment shall happen to be made for defaute of suche eleccion to the dignytie or office of any Archebishopp then the Kynges Highnes his heires and successours, by hys letters patentes under hys greate seale, shall nomynate and present such person, as they wyll dispose to have the seid office and dignitie of Archebishopriche beyng voyde, to one suche Archebishopp and two suche Bisshoppes, or else to four suche Bishopes wythin this Realme or in any the Kynges Domynyons as shalbe assigned by our seid Soveraigne Lorde hys heires or successours.

s 4. *And be it enacted by auctoritie aforseid, that when soo ever any suche presentment or nomynacion shalbe made by the Kynges Highnes hys heires or successours by vertue and auctoritie of this acte and accordyng to the tenour of the same, that then every Archebisshopp and Bishopp to whos handes any suche presentment and nomynacion shalbe directed, shall with all spede and seleritie investe and consecrate the person nominate and presentid by the Kynges Highnes his heires or successours to the office and dignitie that suche person shalbe soo presented unto, and geve and use to hym pall and all other benediccions ceremonyes and thynges requysite for the same, without suing procuryng or optaynyng hereafter any bulles or other thynges at the See of Rome for any suche office or dignitie in any behalf. And yf the seid Deane and Chapyter or Pryor and Convent after suche licence and letters myssyves to theym directed, within the seid XII dayes do electe and chose the seid person mentioned in the seid letters myssyves, accordyng to the requeste of the Kynges Highnes hys heires or successours therof to be made by the seid letters myssyves in that behalf, then theire eleccion shall stonde good and effectuall to all intentes; and that the person soo elected after certificacion made of the same eleccion under the commen and Covent seale of the electours to the Kynges Highnes hys heires or successours, shalbe reputed and taken by the name of Lorde elected of the seid Dignitie and office that he shalbe electid unto; And then makyng suche othe and fealtie only to the Kynges Majestie hys heires and successours as shalbe appoynted for the same, the Kynges Hyghnes by his letters patentes under hys greate seale shall signyfie the seid eleccion yf it be to the dignytie of a Byshopp to the Archebishopp and metropolitane of the provynce where the see of the seid Byshopriche was voyde, yf the See of the seid Archebishopp be full and not voyde; and yf it be voyde, than to any other Archebyshopp within this Realme or in any other the Kynges Domynyons, requyring and commaundyng suche Archebishopp to whome any suche significacion shalbe made, to confirme the seid eleccion and to invest and consecrate the seid persone so electid to the office and Dignitie that he is elected unto, and to geve and use to hym all suche benediccions ceremonyes and other thynges requysite for the same without any suyng procuryng or opteynyng any bulles letters or other thynges frome the See of Rome for the same in any behalf: And yf the person be elected to the office and dignitie of an Archebishopp accordyng to the tenour of this acte, then after suche eleccion certified to the Kynges Highnes in forme afor-*

seid, the same person soo elected to the office and dignitie of an Archebishopp shalbe reputed and taken Lorde electe of the seid office and dignitie of Archebishopp wherunto he shalbe so elected; and then after he hath made such othe and feautie only to the Kynges Majestie hys heires and successours as shalbe lymytted for the same, the Kynges Highnes by hys letters patentes under hys greate seale shall signifie the seid eleccion to one Archebishopp and two other Bisshoppes or els to four Bishoppes within this Realme or within any other the Kynges Domynyons to be assigned by the Kynges Highnes his heires or successours, requyryng and commaundyng the seid Archebishopp and Bysshoppes with all spede and seleritie to confirme the seid eleccion and to investe and consecrate the seid person soo elected to the office and dignitie that he is elected unto, and to geve and use to hym suche palle benediccions ceremonyes and all other thynges requysite for the same without suing procuryng or opteynyng any bulles breves or other thynges at the seid See of Rome or by the auctorytie therof in any behalf.

XI. The thirty-nine articles of 1563 in the Latin form of 1571.[a]

Articuli de quibus convenit inter Archiepiscopos et Episcopos utriusque provinciae et Clerum universum in Synodo Londini an. Dom. 1562 secundum computationem ecclesiae Anglicanae, ad tollendam opinionum dissentionem, et consensum in vera religione firmandum. Aediti authoritate serenissimae Reginae.

1. *De fide in Sacrosanctam Trinitatem.*

Unus est vivus, et verus deus, aeternus, incorporeus, impartibilis, impassibilis, immensae potentiae, sapientiae, ac bonitatis, creator, et conservator omnium tum visibilium, tum invisibilium. Et in unitate hujus divinae naturae, tres sunt personae, eiusdem essentiae, potentiae ac aeternitatis, pater, filius, et Spiritus sanctus.

2. *De Verbo, sive filio dei, qui verus homo factus est.*

Filius, qui est verbum patris, ab aeterno a patre genitus, verus et aeternus Deus, ac patri consubstantialis, in utero beatae virginis, ex illius substantia naturam humanam assumpsit: ita ut duae naturae, divina et humana, integre atque perfecte in unitate personae fuerint inseparabiliter coniunctae, ex quibus est unus Christus, verus Deus, et verus homo, qui vere passus est, crucifixus, mortuus, et sepultus, ut patrem nobis reconciliaret, essetque hostia, non tantum pro culpa originis, verumetiam pro omnibus actualibus hominum peccatis.

3. *De descensu Christi ad Inferos.*

Quemadmodum Christus pro nobis mortuus est, et sepultus, ita est etiam credendus ad inferos descendisse.

4. *De Resurrectione Christi.*

Christus vere a mortuis resurrexit, suumque corpus cum carne, ossibus, omnibusque ad integritatem humanae naturae pertinentibus, recepit: cum quibus in coelum ascendit, ibique residet, quoad, extremo die, ad iudicandos homines reversurus sit.

5. *De Spiritu sancto.*

Spiritus sanctus a patre, et filio procedens, eiusdem est cum patre, et filio essentiae, maiestatis, et gloriae, verus, ac aeternus, Deus.

6. *De divinis Scripturis, quod sufficiant ad salutem.*

Scriptura sacra continet omnia, quae ad salutem sunt necessaria, ita, ut

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[a] Printed after Cardwell, *Synodalia* I, 73.

quicquid in ea nec legitur, neque inde probari potest, non sit a quoquam exigendum, ut tanquam articulus fidei credatur, aut ad salutis necessitatem requiri putetur.

Sacrae Scripturae nomine, eos Canonicos libros veteris et novi Testamenti intelligimus, de quorum authoritate, in Ecclesia nunquam dubitatum est.

De nominibus, et numero librorum sacrae canonicae Scripturae veteris Testamenti.

Genesis.
Exodus.
Leviticus.
Numeri.
Deuteron.
Josuae.
Judicum.
Rut.
Prior liber Samuelis.
Secundus lib. Samuelis.
Prior liber Regum.
Secundus liber Regum.
Prior liber Paralipom.
Secundus liber Paralipomen.
Primus liber Esdrae.
Secundus liber Esdrae.
Liber Hester.
Liber Iob.
Psalmi.
Proverbia.
Ecclesiastes, vel concionator.
Cantica Salomonis.
4 Prophetae maiores.
12 Prophetae minores.

Alios autem libros (ut ait Hieronimus) legit quidem Ecclesia, ad exempla vitae, et formandos mores: illos tamen ad dogmata confirmanda non adhibet, ut sunt.

Tertius liber Esdrae.
Quartus liber Esdrae.
Liber Tobiae.
Liber Judit.
Reliquum libri Hester.
Liber sapientiae.
Liber Jesu filij Sirach.
Baruch Propheta.
Canticum Trium puerorum.
Historia Susannae.
De Bel et Dracone.
Oratio Manasses.
Prior lib. Machabeorum.
Secundus liber Machabeorum.

Novi Testamenti omnes libros (ut vulgo recepti sunt), recipimus, et habemus pro Canonicis.

7. *De veteri Testamento.*

Testamentum vetus, novo contrarium non est, quandoquidem tam in veteri, quam in novo, per Christum, qui unicus est mediator Dei, et hominum, Deus et homo, aeterna vita, humano generi est proposita. Quare male sentiunt, qui veteres tantum in promissiones temporarias sperasse contingunt. Quanquam lex a Deo data per Mosen (quoad ceremonias et ritus) Christianos non astringat, neque civilia eius praecepta in aliqua republica necessario recipi debeant; nihilominus tamen ab obedientia mandatorum (quae moralia vocantur) (nullus quantumvis Christianus) est solutus.

8. *De tribus Symbolis.*

Symbola tria, Nycoenum, Athanasij, et quod vulgo Apostolorum appellatur, omnino recipienda sunt, et credenda, nam firmissimis Scripturarum testimonijs probari possunt.

9. *De peccato originali.*

Peccatum originis non est (ut fabulantur Pelagiani) in imitatione Adami situm, sed est vitium, et depravatio naturae, cuiuslibet hominis, ex Adamo naturaliter propagati: qua fit, ut ab originali iusticia quam longissime distet, ad malum sua natura propendeat, et caro semper adversus spiritum concupiscat, unde in unoquoque nascentium, iram Dei, atque damnationem meretur. Manet etiam in renatis haec naturae depravatio. Qua fit, ut affectus carnis Grece φρόνημα σαρκός, (quod alij sapientiam, alij sensum, alij affectum, alij studium carnis interpretantur,) legi Dei non subijciatur. Et quanquam renatis et credentibus, nulla propter Christum est condemnatio, peccati tamen in sese rationem habere concupiscentiam, fatetur apostolus.

10. *De libero arbitrio.*

Ea est hominis post lapsum Adae conditio, ut sese naturalibus suis viribus, et bonis operibus, ad fidem, et invocationem Dei convertere, ac praeparare non possit. Quare absque gratia Dei (quae per Christum est) nos praeveniente, ut velimus, et cooperante, dum volumus, ad pietatis opera facienda, quae Deo grata sunt, et accepta, nihil valemus.

11. *De hominis iustificatione.*

Tantum propter meritum Domini, ac Servatoris nostri Jesu Christi, per fidem, non propter opera, et merita nostra, iusti coram Deo reputamur. Quare sola fide nos iustificari, doctrina est saluberrima ac consolationis plenissima, ut in homilia de iustificatione hominis, fusius explicatur.

12. *De bonis operibus.*

Bona opera, quae sunt fructus fidei, et iustificatos sequuntur, quanquam peccata nostra expiare, et divini iudicij severitatem ferre non possunt: Deo tamen grata sunt, et accepta in Christo, atque ex vera et viva fide, necessario profluunt, ut plane ex illis, aeque fides viva cognosci possit, atque arbor ex fructu iudicari.

13. *De operibus ante iustificationem.*

Opera quae fiunt, ante gratiam Christi, et spiritus eius afflatum, cum ex fide Jesu Christi non prodeant, minime Deo grata sunt, neque gratiam (ut multi vocant) de congruo merentur. Immo cum non sint facta, ut Deus illa fieri voluit, et praecepit, peccati rationem habere non dubitamus.

14. *De operibus supererogationis.*

Opera quae supererogationis appellant, non possunt sine arrogantia, et impietate praedicari. Nam illis declarant homines, non tantum se Deo reddere, quae tenentur, sed plus in eius gratiam facere, quam deberent, cum aperte Christus dicat: Cum feceritis omnia quaecunque praecepta sunt vobis, dicite, servi inutiles sumus.

15. *De Christo, qui solus est sine peccato.*

Christus, in nostrae naturae veritate, per omnia similis factus est nobis, excepto peccato, a quo prorsus erat immunis, tum in carne, tum in spiritu. Venit ut agnus, absque macula, qui mundi peccata per immolationem sui semel factam, tolleret, et peccatum (ut inquit Iohannes) in eo non erat: sed nos reliqui etiam baptizati, et in Christo regenerati, in multis tamen offendimus omnes. Et si dixerimus, quia peccatum non habemus, nos ipsos seducimus, et veritas in nobis non est.

16. *De peccato post Baptismum.*

Non omne peccatum mortale post Baptismum voluntarie perpetratum, est peccatum in Spiritum sanctum, et irremissibile. Proinde lapsis a Baptismo in peccata, locus poenitentiae non est negandus, post acceptum spiritum sanctum possumus a gratia data recedere, atque peccare: denuoque per gratiam Dei resurgere, ac resipiscere: ideoque illi damnandi sunt, qui se quamdiu hic vivant, amplius non posse peccare affirmant, aut vere resipiscentibus veniae locum denegant.

17. *De praedestinatione, et electione.*

Praedestinatio ad vitam, est aeternum Dei propositum, quo ante iacta mundi fundamenta, suo consilio, nobis quidem occulto constanter decrevit, eos quos in Christo elegit ex hominum genere, a maledicto et exitio liberare, atque (ut vasa in honorem efficta) per Christum, ad aeternam salutem adducere. Unde qui tam praeclaro Dei beneficio sunt donati, illi spiritu eius, oportuno

tempore operante, secundum propositum eius, vocantur, vocationi per gratiam parent, iustificantur gratis, adoptantur in filios Dei unigeniti eius Jesu Christi imagini efficiuntur conformes, in bonis operibus sancte ambulant, et demum ex Dei misericordia pertingunt ad sempiternam foelicitatem.

Quemadmodum praedestinationis, et electionis nostrae in Christo pia consideratio, dulcis, suavis, et ineffabilis consolationis plena est, vere pijs, et hijs qui sentiunt in se vim spiritus Christi, facta carnis, et membra, quae adhuc sunt super terram, mortificantem, animumque ad coelestia, et superna rapientem. Tum quia fidem nostram de aeterna salute consequenda per Christum plurimum stabilit, atque confirmat, tum quia amorem nostrum in Deum vehementer accendit. Ita hominibus, curiosis, carnalibus, et Spiritu Christi destitutis, ob oculos perpetuo versari, predestinationis Dei sententiam, pernitiosissimum est praecipitium, unde illos diabolus protrudit, vel in desperationem, vel in aeque pernitiosam impurissimae vitae securitatem, deinde promissiones divinas sic amplecti oportet, ut nobis in sacris literis generaliter propositae sunt, et Dei voluntas in nostris actionibus ea sequenda est, quam in verbo Dei habemus, diserte revelatam.

18. *De speranda aeterna salute tantum in nomine Christi.*

Sunt et illi Anathematizandi, qui dicere audent unumquemque in lege, aut secta quam profitetur esse servandum, modo iuxta illam, et lumen naturae accurate vixerit, cum sacrae literae tantum Jesu Christi nomen praedicent, in quo salvos fieri homines oporteat.

19. *De Ecclesia.*

Ecclesia Christi visibilis est coetus fidelium, in quo verbum Dei purum praedicatur, et sacramenta, quoad ea que necessario exigantur, iuxta Christi institutum recte administrantur. Sicut erravit Ecclesia Hierosolimitana, Alexandrina et Antiochena: ita et erravit ecclesia Romana non solum quoad agenda, et ceremoniarum ritus, verum in hijs etiam quae credenda sunt.

20. *De Ecclesiae authoritate.*

Ecclesiae non licet quicquam instituere, quod verbo Dei adversetur neque unum Scripturae locum sic exponere potest, ut alteri contradicat. Quare licet Ecclesia sit divinorum librorum testis, et conservatrix, attamen ut adversus eos nihil decernere, ita praeter illos, nihil credendum de necessitate salutis debet obtrudere.

21. *De authoritate Conciliorum generalium.*

Generalia concilia, sine iussu, et voluntate principum congregari non possunt, et ubi convenerint, quia ex hominibus constant, qui non omnes spiritu, et verbo Dei reguntur, et errare possunt, et interdum errarunt etiam in his que ad normam pietatis pertinent: ideoque quae ab illis constituuntur, ut ad salutem necessaria, neque robur habent, neque authoritatem, nisi ostendi possint e sacris literis esse desumpta.

22. *De purgatorio.*

Doctrina Romanensium de purgatorio, de indulgentijs, de veneratione, et adoratione, tum imaginum, tum reliquiarum, nec non de invocatione sanctorum, res est futilis, inaniter conficta, et nullis Scripturarum testimonijs, innititur: immo verbo Dei contradicit.

23. *De vocatione ministrorum.*

Non licet cuiquam sumere sibi munus publice praedicandi, aut administrandi sacramenta in ecclesia, nisi prius fuerit ad haec obeunda legitime vocatus, et missus. Atque illos legitime vocatos et missos existimare debemus, qui per homines, quibus potestas vocandi ministros, atque mittendi

in vineam Domini, publice concessa est in ecclesia, coaptati fuerint, et asciti in hoc opus.

24. *De precibus publicis dicendis in lingua vulgari.*

Lingua populo non intellecta, publicas in ecclesia preces peragere, aut sacramenta administrare, verbo Dei et primitivae ecclesiae consuetudini plane repugnat.

25. *De Sacramentis.*

Sacramenta a Christo instituta, non tantum sunt notae professionis Christianorum, sed certa quaedam potius testimonia, et efficatia signa gratiae, atque bonae in nos voluntatis Dei, per quae invisibiliter ipse in nos operatur, nostramque fidem in se non solum excitat, verumetiam confirmat.

Duo a Christo domino nostro in evangelio instituta sunt sacramenta, scilicet, Baptismus, et coena domini.

Quinque illa vulgo nominata sacramenta: scilicet, confirmatio, poenitentia, ordo, matrimonium, et extrema unctio, pro sacramentis evangelicis habenda non sunt, ut quae, partim, a prava Apostolorum imitatione profluxerunt, partim vitae status sunt in scripturis quidem probati: sed sacramentorum eandem cum baptismo, et coena Domini rationem non habentes, ut quae signum aliquod visibile, seu caeremoniam a Deo institutam, non habeant.

Sacramenta non in hoc instituta sunt a Christo ut spectarentur, aut circumferrentur, sed ut rite illis uteremur, et in hijs duntaxat qui digne percipiunt salutarem habent effectum: Qui vero indigne percipiunt, damnationem (ut inquit Paulus) sibi ipsis acquirunt.

26. *De vi institutionum divinarum, quod eam non tollat malitia Ministrorum.*

Quamvis in ecclesia visibili, bonis mali semper sunt admixti, atque interdum ministerio verbi, et sacramentorum administrationi praesint, tamen cum non suo, sed Christi nomine agant, eiusque mandato, et authoritate ministrent, illorum ministerio uti licet, cum in verbo Dei audiendo, tum in sacramentis percipiendis. Neque per illorum malitiam, effectus institutorum Christi tollitur, aut gratia donorum Dei minuitur, quoad eos qui fide, et rite sibi oblata percipiunt, quae propter institutionem Christi, et promissionem efficatia sunt, licet per malos administrentur.

Ad ecclesiae tamen disciplinam pertinet, ut in malos ministros inquiratur, accusenturque ab his, qui eorum flagitia noverint, atque tandem iusto convicti iudicio deponantur.

27. *De Baptismo.*

Baptismus non est tantum professionis signum, ac discriminis nota, qua Christiani a non Christianis discernantur, sed etiam est signum regenerationis, per quod, tanquam per instrumentum recte Baptismum suscipientes, ecclesiae inseruntur, promissiones de remissione peccatorum, atque adoptione nostra in filios Dei per Spiritum sanctum visibiliter obsignantur, fides confirmatur, et vi divinae invocationis gratia augetur.

Baptismus parvulorum omnino in ecclesia retinendus est, ut qui cum Christi institutione optime congruat.

28. *De Coena Domini.*

Coena Domini non est tantum signum mutuae benevolentiae Christianorum inter sese, verum potius est Sacramentum nostrae per mortem Christi redemptionis.

Atque adeo, rite, digne, et cum fide sumentibus, panis quem frangimus est communicatio corporis Christi: similiter poculum benedictionis, et communicatio sanguinis Christi.

Panis et vini transubstantiatio in Eucharistia, ex sacris literis probari non

potest. Sed apertis Scripturae verbis adversatur, Sacramenti naturam evertit, et multarum superstitionum dedit occasionem.

Corpus Christi datur, accipitur, et manducatur in Coena, tantum coelesti, et spirituali ratione. Medium autem quo corpus Christi accipitur, et manducatur in Coena, fides est.

Sacramentum Eucharistiae, ex institutione Christi non servabatur, circumferebatur, elevebatur, nec adorabatur.

29. *De manducatione corporis Christi, et impios illud non manducare.*

Impij, et fide viva destituti, licet carnaliter, et visibiliter (ut Augustinus loquitur) corporis, et sanguinis Christi sacramentum, dentibus premant, nullo tamen modo Christi participes efficiuntur. Sed potius tantae rei sacramentum, seu symbolum, ad iudicium sibi manducant, et bibunt.

30. *De utraque specie.*

Calix Domini laicis non est denegandus, utraque enim pars Dominici sacramenti, ex Christi institutione, et praecepto, omnibus Christianis, ex aequo administrari debet.

31. *De unica Christi oblatione in cruce perfecta.*

Oblatio Christi semel facta, perfecta est redemptio, propitiatio, et satisfactio pro omnibus peccatis totius mundi, tam originalibus, quam actualibus. Neque praeter illam unicam, est ulla alia pro peccatis expiatio, unde missarum sacrificia, quibus, vulgo dicebatur, sacerdotem offerre Christum, in remissionem poenae, aut culpae, pro vivis et defunctis, blasphema figmenta sunt, et perniciosae imposturae.

32. *De coniugio sacerdotum.*

Episcopis, Praesbiteris, et Diaconis nullo mandato divino praeceptum est, ut aut coelibatum voveant, aut a matrimonio abstineant. Licet igitur etiam illis, ut caeteris omnibus Christianis, ubi hoc ad pietatem magis facere iudicaverint, pro suo arbitratu matrimonium contrahere.

33. *De excommunicatis vitandis.*

Qui per publicam ecclesiae denunciationem rite ab unitate ecclesiae praecisus est, et excommunicatus, is ab universa fidelium multitudine (donec per poenitentiam publice reconciliatus fuerit arbitrio judicis competentis) habendus est tanquam Ethnicus et publicanus.

34. *De traditionibus Ecclesiasticis.*

Traditiones atque ceremonias easdem, non omnino necessarium est esse ubique, aut prorsus consimiles. Nam et variae semper fuerunt, et mutari possunt, pro Regionum, temporum, et morum diversitate, modo nihil contra verbum Dei instituatur.

Traditiones, et ceremonias ecclesiasticas quae cum verbo Dei non pugnant, et sunt authoritate publica institutae, atque probatae, quisquis privato consilio volens, et data opera, publice violaverit, is, ut qui peccat in publicum ordinem Ecclesiae, quique laedit authoritatem magistratus, et qui infirmorum fratrum conscientias vulnerat, publice ut caeteri timeant, arguendus est.

Quaelibet ecclesia particularis, sive Nationalis, authoritatem habet instituendi, mutandi, aut abrogandi Ceremonias, aut ritus ecclesiasticos, humana tantum authoritate institutos, modo omnia ad aedificationem fiant.

35. *De Homiliis.*

Tomus secundus Homiliarum, quarum singulos titulos huic articulo subiunximus, continet piam et salutarem doctrinam, et hijs temporibus necessariam, non minus quam prior tomus Homiliarum, quae editae sunt, tempore Edwardi sexti: Itaque eas in ecclesiis per ministros diligenter, et clare, ut a populo intelligi possint, recitandas esse iudicavimus.

De nominibus Homiliarum.

Of the right use of the church.
Againſt perill of Idolatrie.
Of repairing and keping cleane of Churches.
Of good workes.
First of faſting.
Againſt gluttony and drunkennes.
Againſt exceſſe of apparell.
Of prayer.
Of the place and time of praier.
That common prayers and Sacramentes ought to be miniſtered in a knowne tonge.
Of the reverent eſtimation of Gods word.
Of almes doyng.
Of the Nativitie of Chriſt.
Of the paſſion of Chriſt.
Of the reſurrection of Chriſt.
Of the worthy receiving of the Sacrament of the body and bloude of Chriſt.
Of the giftes of the holy ghoſt.
For the Rogation dayes.
Of the ſtate of Matrimonie.
Of Repentaunce.
Againſt idlenes.
Againſt rebellion.

36. *De Episcoporum et Ministrorum consecratione.*

Libellus de consecratione Archiepiscoporum, et Episcoporum, et de ordinatione praesbyterorum, et Diaconorum, editus nuper temporibus Edwardi VI et authoritate Parliamenti illis ipsis temporibus confirmatus, omnia ad eiusmodi consecrationem, et ordinationem necessaria continet, et nihil habet, quod ex se sit aut superstitiosum aut impium: itaque quicunque iuxta ritus illius libri consecrati, aut ordinati sunt, ab anno secundo praedicti regis Edwardi, usque ad hoc tempus. aut imposterum iuxta eosdem ritus consecrabuntur, aut ordinabuntur, rite, atque ordine, atque legitime statuimus esse, et fore consecratos, et ordinatos.[1]

37. *De civilibus magistratibus.*

Regia maiestas in hoc angliae regno, ac caeteris eius dominijs, summam habet potestatem, ad quam, omnium statuum huius regni, sive illi ecclesiastici sint, sive civiles, in omnibus causis, suprema gubernatio pertinet, et nulli externae iurisdictioni est subjecta, nec esse debet.

Cum Regiae Maiestati summam gubernationem tribuimus, quibus titulis intelligimus, animos quorundam calumniatorum offendi, non damus Regibus nostris, aut verbi Dei, aut Sacramentorum administrationem, quod etiam iniunctiones ab Elizabetha Regina nostra, nuper editae, apertissime testantur. Sed eam tantum praerogativam, quam in sacris scripturis a Deo ipso, omnibus pijs Principibus, videmus semper fuisse attributam, hoc est, ut omnes status, atque ordines fidei suae a Deo commissos, sive illi ecclesiastici sint, sive civiles, in officio contineant, et contumaces ac delinquentes, gladio civili coerceant.

Romanus pontifex nullam habet iurisdictionem in hoc regno Angliae.

Leges Regni possunt Christianos propter capitalia, et gravia crimina, morte punire.

Christianis licet, ex mandato magistratus, arma portare, et iusta bella administrare.

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[1] 14 *Car. II* (1662) c 4 (*Act of Uniformity*) s 26 enacts that article 36 of the 39 articles shall in future in all subscriptions to the 39 articles have reference to the ordinal appended to the new prayer-book introduced by that act.

38. *De illicita bonorum communicatione.*

Facultates et bona Christianorum non sunt communia, quoad ius et possessionem (ut quidam Anabaptistae falso iactant) debet tamen quisque de his quae possidet, pro facultatum ratione, pauperibus elemosynas benigne distribuere.

39. *De iureiurando.*

Quemadmodum iuramentum vanum, et temerarium a Domino nostro Jesu Christo, et Apostolo eius Jacobo, Christianis hominibus interdictum esse, fatemur: ita Christianorum religionem minime prohibere censemus, quin iubente magistratu in causa fidei, et charitatis iurare liceat, modo id fiat iuxta Prophetae doctrinam, in iustitia, in iudicio et veritate.

[40. *Confirmatio Articulorum.*]

XII. Extract from the Canons of 1604.[a 1]

(I) De ecclesia Anglicana.

1. *Suprema in ecclesiam Anglicanam auctoritas regiae majestati asserenda.*

Prout officii nostri ratione erga serenissimam majestatem regiam obligamur, imprimis statuimus et ordinamus, ut archiepiscopus Cantuariensis pro tempore existens, omnes episcopi hujus provinciae, decani item, archidiaconi, rectores, vicarii, caeterique ex clero quicunque, tum ipsi fideliter custodiant ac observent, tum (quantum in ipsis est) ab aliis curent observari, et custodiri omnia et singula statuta, ac leges sancitas et constitutas, pro antiqua jurisdictione in statum ecclesiasticum hujus regni coronae restituenda, omnique extranea potestate, quae eidem repugnet, exterminanda. Porro etiam, ut omnes ecclesiasticae personae ad curam animarum constitutae omnesque alii concionatores et theologici in quibuscunque ecclesiis praelectores (quantum ingenio, cognitione, ac doctrina valebunt) pure et sincere absque omni fuco aut dolo, singulis annis quater ad minimum publice in concionibus, aliisque homiliis, ac praelectionibus suis doceant, divulgent, enuncient, ac declarent, usurpatam omnem et peregrinam potestatem (utpote nullo jure divino nixam et fundatam) justissimis de causis sublatam esse et abolitam; et propterea nullam obedientiam aut subjectionem infra majestatis suae regna et dominia hujusmodi extraneae potestati cuicunque ullatenus deberi: sed auctoritatem

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[1] The Latin text of the new canons 36, 37, 38 and 40 agreed (in English and Latin forms) in 1865 is given after *Chron. of Conv. Cant.* 1865, p. 2400.

The Latin text of the canons agreed and set forth (in English and Latin) in 1887–8, which alter in some respects canons 62 and 102, is given after *Chron. of Conv. Cant.* 1888, behind p. 2.

In 1892 the following new canon was set forth. On the way in which it passed cf. § 55, note 25. It runs: *If any beneficed Priest shall by reason of any crime or immorality proved against him become legally disqualified from holding preferment it shall be the duty of the Bishop of the Diocese wherein his benefice is situate to declare without further trial the benefice with cure of souls (if any) vacant and if it should not be so declared vacant within twenty one days it shall be declared vacant by the Archbishop of the Province or under his authority.* The adoption of this canon was caused by 55 & 56 *Vict.* (1892) ss 5, 6; cf. s 8.

How far the several canons of 1604 are merely a repetition of previous synodal resolutions is shown by Mackenzie E. C. Walcott, *The Constitutions and Canons Ecclesiastical of the Church of England* (only the canons of 1604 are meant), *referred to their original sources, and illustrated with explanatory notes*, Oxford and London, 1874.

[a] From Cardwell, *Synodalia* I, 164.

regiam infra regna sua Angliae, Scotiae, et Hiberniae, ac reliqua ipsius dominia et territoria proxime et secundum Deum primam esse et supremam, cui omnes earundem regionum tam incolae, quam indigenae fidem omnem, et obedientiam supra aliam quamcunque in terris potestatem lege divina tenentur exhibere.

2. *Regii in ecclesiam Anglicanam primatus impugnatores coërciti.*

Quicunque inposterum affirmabit, majestatem regiam non habere eandem auctoritatem in causis ecclesiasticis, quam pii principes apud Judaeos, et christiani imperatores in primitiva ecclesia obtinuerunt, vel regalem ipsius in iisdem causis primatum, hujus regni coronae jamdiu vindicatum, ac legibus ejusdem regni in ea stabilitum, ullatenus laedere aut extenuare praesumpserit, excommunicetur ipso facto, non nisi per archiepiscopum restituendus, idque postquam resipuerit, ac impios hosce errores publice revocarit.

3. *Ecclesia Anglicana orthodoxa.*

Quicunque inposterum affirmabit, ecclesiam Anglicanam, sub regia majestate legibus stabilitam, non esse orthodoxam, et apostolicam ecclesiam, apostolorum videlicet doctrinam tradentem, et astruentem, excommunicetur ipso facto, non nisi per archiepiscopum restituendus, idque postquam resipuerit, ac impium hunc errorem publice revocarit.

4. *Divina cultus ratio in ecclesia Anglicana stabilita, pia et orthodoxa.*

Quicunque inposterum affirmabit, liturgiae formam in ecclesia Anglicana legibus stabilitam, et in libro precum publicarum, ac administrationis sacramentorum comprehensam, corruptum, superstitiosum, aut illicitum esse Dei cultum, vel quicquam in se continere, quod Scripturarum canoni sit contrarium, excommunicetur ipso facto, non nisi per episcopum dioecesanum, vel archiepiscopum restituendus, idque postquam resipuerit, ac impium hunc errorem publice revocarit.

5. *Doctrinae articuli in ecclesia Anglicana stabiliti, pii et orthodoxi.*

Quicunque inposterum affirmabit, ullum ex triginta novem articulis, in quos consensum est ab archiepiscopis et episcopis utriusque provinciae, ac reliquo omni clero in synodo Londini habita anno Domini MDLXII (ad tollendam utique opinionum varietatem, et consensum in causa fidei firmandum, et stabiliendum) ulla ex parte superstitiosos aut erroneos existere, vel omnino ejusmodi, ut in eorum veritatem salva conscientia subscribi nequeat, excommunicetur ipso facto, non nisi per archiepiscopum restituendus, idque postquam resipuerit, ac impios hos errores publice revocarit.

6. *Ceremoniarum in ecclesia Anglicana obtinentium usus, pius et licitus.*

Quicunque inposterum affirmabit, ecclesiae Anglicanae ritus ac ceremonias legibus constitutas, impias, antichristianas, aut superstitiosas esse, vel denique ejus generis, ut homines pii ac religiosi, quantumvis legitima auctoritate jussi, non possint integra conscientia eas approbare, aut observare, vel etiam (prout occasio tulerit) eisdem subscribere, excommunicetur ipso facto, nullatenus absolvendus, priusquam resipuerit, ac impios hos errores publice revocarit.

7. *Ecclesiae Anglicanae administratio verbo divino consona.*

Quicunque inposterum affirmabit, ecclesiae Anglicanae sub regia majestate regimen et disciplinam per archiepiscopos, episcopos, decanos, archidiaconos, et reliquos ad ejusdem gubernaculum constitutos, antichristianum esse, ac verbo divino contrarium, excommunicetur ipso facto, nullatenus absolvendus, priusquam resipuerit, ac impium hunc errorem publice revocarit.

8. *Cleri ordinandi ratio in ecclesia Anglicana verbo divino consona.*

Quicunque inposterum affirmabit, aut docebit, formam et ritum episcopos, presbyteros, et diaconos ordinandi, et inaugurandi quicquam in se continere, quod pugnet cum verbo divino, illosque omnes, quotquot ad eum modum episcopi, presbyteri, et diaconi ordinantur, non esse rite ordinatos, neque vel a seipsis vel ab aliis pro episcopis, presbyteris, aut diaconis habendos, priusquam ad sacra illa officia aliam ordinationem fuerint adepti, excommunicetur ipso facto, nullatenus absolvendus, priusquam resipuerit, ac impios hos errores publice revocarit.

9. *Auctores schismatis ac dissidii ab ecclesiae Anglicanae communione coërciti.*

10. *Schismaticorum in Ecclesia Anglicana fautores coërciti.*

11. *Conventiculorum in ecclesia Anglicana propugnatores coërciti.*

12. *Ordinationum in conventiculis conditarum propugnatores coërciti.*

(II) **De cultu Divino, et sacramentorum administratione.**

13. *Liturgia publica, et reliqua pietatis exercitia diebus sacris celebranda.*

14. *Liturgiae publicae praescriptus canon diebus sacris observandus.*

15. *Litania diebus Mercurii et Veneris recitanda.*

16. *Liturgiae publicae praescriptus canon in academiis observandus.*

17. *Inter liturgiae publicae celebrationem superpellicia, et epomides in academiis adhibendae.*

18. *Inter liturgiae publicae celebrationem reverentia solennis adhibenda.*

19. *Inter liturgiae publicae celebrationem otiosi ab ecclesiae ambitu repellendi.*

20. *Panis et vinum in sacrae coenae usum paranda.*

21. *Coenae trina perceptio quotannis indicta.*

22. *Coenae administrationem solennis indictio praeire jussa.*

23. *Coenae usus frequentior academicis indictus, et coena utentibus genuum flexio injuncta.*

24. *Coenae in festis solennibus administratio in ecclesiis cathedralibus indicta, et coenam administrantibus capparum usus injunctus.*

25. *Superpelliciorum et epomidum usus, coena non administrata, in ecclesiis cathedralibus indictus.*

26. *Notorii peccati consuetudine infames a sacra coena repellendi.*

27. *Schismatici a coenae communione arcendi.*

28. *Extranei a coenae communione repellendi.*

29. *Parentes in liberorum suorum baptismate, et pueri coenae Dominici incapaces, susceptores esse prohibiti.*

30. *Crucis in baptismo ceremonia explicata.*

(III) **De ministris, eorumque ordinatione ac functione.**

31. *Jejunia quatuor temporum ministrorum ordinationi decreta.*

Cum prisca sanctorum patrum auctoritas, apostolorum exemplo freta, in solenni ministrorum ordinatione preces ac jejunia celebranda praeceperit; iisdemque adeo precum et jejuniorum officiis stata quaedam tempora ex professo decreverit, in quibus duntaxat sacri ordines essent conferendi; nos sanctum et pium illorum institutum colentes, volumus et statuimus, ut nulli inposterum presbyteri aut diaconi ordinentur, nisi in diebus dominicis immediate sequentibus jejunia quatuor temporum, vulgo Septimanas Cinerum, ad preces et jejunia (idque hunc ipsum in usum) antiquitus institutas, atque in ecclesia Anglicana hodie continuatas. Quod utique fieri volumus in ecclesia cathedrali, vel parochiali, ubi episcopus commoratur ac tempore divinorum, assistente non solum archidiacono, sed et decano, et duobus ad minus praebendariis, aut (illis legitime detentis) quatuor aliis gravioribus personis, quae magistri artium ad minimum extiterint, et pro publicis concionatoribus legitime approbatae.

32. *Utrumque ordinem eodem die non conferendum.*

Cum ex patrum antiquorum sententia et primitivae ecclesiae praxi diaconi officium ad ministerii dignitatem gradus quidam sit constitutus; statuimus et ordinamus, ut nullus deinceps episcopus aliquam cujusvis conditionis personam (quibuscunque tandem animi dotibus commendatam) uno et eodem die diaconum et presbyterum constituat; quin ut ritus ea in parte praescriptus in libro de episcopis, presbyteris, et diaconis ordinandis, et inaugurandis, stricte observetur; non quo diaconos omnes presbyterii aditu per annum integrum prohibeamus, cum tamen episcopus justam ejus admittendi causam alioqui invenerit, verum ut cum quatuor tempora diaconorum et presbyterorum ordinationi in singulos annos sint decreta, aliquid saltem spatii detur, ad periculum de singulis faciendum, quales in officio diaconi se exhibuerint, priusquam in ordinem presbyterorum suscipiantur.

33. *Neminem sine certo titulo ordinandum.*

Multis jam olim patrum decretis cautum est, ne quem liceret diaconum, vel presbyterum ordinari, nisi quem constaret, certum aliquem et designatum muneris sui exercendi locum per id tempus obtinere; quorum nos auctoritatem secuti, statuimus et ordinamus, ne quis deinceps in sacros ordines admittatur, nisi qui eodem tempore praesentationem suiipsius ad promotionem aliquam ecclesiasticam infra dioecesin illius episcopi, a quo manuum impositionem petit, tunc vacantem exhibuerit; vel verum et indubitatum certificatorium attulerit, sive de ecclesia aliqua infra dioecesin seu jurisdictionem dicti episcopi, cujus cura fungi possit, sive de loco diaconi vel presbyteri in cathedrali aut collegiata aliqua ecclesia, infra eandem dioecesin vacante, in quo functionem suam exerceat; vel nisi fidem fecerit, se esse actu socium, aut jura socii obtinere, vel designatum esse conductitium sive capellanum in aliquo collegio Cantabrigiensi aut Oxoniensi, vel etiam ad magistri gradum ante quinquennium provectum, suis ibidem sumptibus degere; vel nisi ab episcopo ipsum ordinante in beneficium sive ad exercendam aliquam curam, tunc etiam vacantem, brevi post sit admittendus. Si quis vero episcopus in sacros ordines quemquam asciverit, qui praedictorum aliquo titulo non sit praeditus, tunc omnia illi necessaria eatenus subministrabit, donec eidem de aliqua ecclesia prospexerit. Quod si facere recusaverit, per archi-

episcopum, uno praeterea episcopo assidente, ab ordinatione diaconorum et presbyterorum per integrum annum suspendetur.

34. *Certae conditiones in ordinandis requisitae.*

Nullus episcopus in sacros ordines quemquam de caetero cooptabit, qui non ex sua ipsius dioecesi fuerit, nisi vel ex altera nostratium academiarum prodierit; vel nisi literas, quas vocant, dimissorias attulerit ab episcopo de cujus jurisdictione existit; et, si diaconus fieri expetit, vicesimum tertium, sin presbyter, vicesimum quartum aetatis suae annum jam compleverit, ac etiam in altera dictarum academiarum gradum aliquem scholasticum susceperit; vel saltem nisi rationem fidei suae, juxta articulos religionis in synodo episcoporum et cleri, ann. MDLXII approbatos, Latino sermone reddere possit, et eandem scripturae testimoniis corroborare; ac ulterius de vita sua laudabili, et morum integritate literas testimoniales exhibuerit sub sigillo alicujus collegii Cantabrigiensis, aut Oxoniensis, ubi antea moram fecerit, vel certe trium aut quatuor gravium ministrorum, una cum subscriptione et testimonio aliorum probabilium et fide dignorum hominum, quibus ejusdem vita et mores per proximum triennium fuerint explorati.

35. *Neminem, nisi praevio solenni examine, ordinandum.*

Episcopus, priusquam cuilibet ordinando manus imponat, diligenti eum examine excutiet ac explorabit, praesentibus eisdem ministris, quos velit in impositione manuum sibi assistere. Quodsi episcopus legitime impeditus praedicto examini vacare nequeat, illud tamen a praefatis ministris solicite fieri procurabit. Proviso semper, ut qui episcopo in dicta examinatione, et manuum impositione adesse debeant, de ipsius cathedrali ecclesia existant (siquidem eorum facultas dabitur) alioqui tres ad minus idonei concionatores ex eadem dioecesi adsciscantur. Quod si quis episcopus vel suffraganeus in sacros ordines quempiam sine praedictis qualitatibus, aut justo (ut supra) examine cooptarit, per provinciae suae archiepiscopum ea de re certiorem factum, assidente uno alio episcopo, ab omni ordines conferendi potestate in integrum biennium secludetur.

36. *Neminem, nisi praevia trium articulorum subscriptione, ordinandum.*

Nemo ad sacros ordines, vel ecclesiasticum aliquod beneficium per institutionem aut collationem, vel ad concionatoris, praelectoris, aut catechistae munus exercendum sive in alterutra academia, sive in cathedrali vel collegiata aliqua ecclesia, sive in urbe aut oppido mercatorio, sive in parochiali ecclesia vel capella, vel alio denique hujus regni loco deinceps admittetur, nisi prius vel ab archiepiscopo, vel episcopo ejus dioeceseos, in qua est victurus, vel ab altera academiarum licentiam et facultatem earundem subscriptionibus, et sigillis munitam impetraverit, tribusque sequentibus articulis, modo et forma a nobis praefinitis, subscripserit.

I. Quod majestas regia secundum Deum unicus est et supremus gubernator hujus regni, omniumque aliorum ipsius dominiorum ac territoriorum, tam in omnibus spiritualibus sive ecclesiasticis rebus aut causis, quam in secularibus; et quod nullus extraneus princeps, vel persona, nec ullus praelatus, status, aut dominatus habet aut habere debet ullam jurisdictionem, potestatem, superioritatem, praeeminentiam, vel auctoritatem ecclesiasticam sive spiritualem infra majestatis suae dicta regna, dominia et territoria.

II. Quod liber publicae liturgiae, et episcopos, presbyteros, et diaconos ordinandi et consecrandi, nihil in se contineat, quod verbo Dei sit contrarium, quodque eodem taliter uti liceat; et quod ipse in publicis precibus, et sacramentis administrandis illam prorsus formam, quae in dicto libro praescribitur, et non aliam, sit observaturus.

III. Quod libro de religionis articulis, in quos consensum est ab archiepiscopis, et episcopis utriusque provinciae, ac reliquo omni clero in synodo Londinensi an. MDLXII omnino comprobat; et quod omnes ac singulos arti-

culos in eodem contentos qui triginta novem, citra ratificationem, numerantur, verbo Dei consentaneos esse agnoscit.

Hisce tribus articulis qui volet subscribere, ad vitandam omnem ambiguitatem, hac verborum formula, nomine et cognomine suo expressis, in subscribendo utetur: "Ego N. N. tribus his praefixis articulis, omnibusque in eisdem contentis, lubens et ex animo subscribo." Quodsi quis episcopus aliquem ordinaverit, admiserit, vel facultate aut licentia, ut superius dictum est, ulla donaverit, nisi prius sub modo et forma praestitutis subscripserit; is a collatione ordinum, et licentiarum ad concionandum per anni spatium submovebitur. Academias vero, si quid hac in parte deliquerint, juris ultioni, et regiae censurae relinquimus.[2]

37. *Ordinatis, dioecesin mutantibus, subscriptio coram episcopo dioecesano iteranda.*

Si quis concionandi, legendi, praelegendi, vel catechizandi legitima alioqui potestate praeditus (ut supra) in ullam dioecesin ibidem commoraturus devenerit, is ad hujusmodi munera exercenda, vel ad sacramenta celebranda, aut quamlibet ecclesiasticam functionem illic obeundam nullatenus admittetur, a quocunque tandem dictam potestatem acceperit, nisi prius coram episcopo ejusdem dioeceseos, in qua munerum praefatorum aliquo fungi debeat, in supradictos articulos per manus suae subscriptionem consenserit.[3]

38. *Ordinati, post subscriptionem praevaricantes, a ministerio removendi.*

Siquis minister, postquam praefatis articulis subscripserit, liturgiae formula, vel ritibus et ceremoniis quibuscunque in libro precum publicarum indictis, uti deinceps omiserit, suspensionis poena coerceatur, ac nisi post mensem se emendarit ac submiserit, excommunicetur; quodsi per alium adhuc mensem in contumacia permanserit, a ministerio sacro amoveatur.[4]

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[2] Canon 36 of 1865 (cf. note 1) runs:—

Neminem, nisi praevia affirmationis infra dictae pronuntiatione atque subscriptione ordinandum.

From *Nemo* to *impetraverit* the text is as above, then: *et sequentem affirmationem pronuntiaverit, eidemque subscripserit; cui qui volet subscribere, ad vitandam omnem ambiguitatem, hac verborum formula, nomine et cognomine suo expressis, in pronuntiando atque subscribendo utetur:*

"I, A. B., do solemnly make the following declaration: I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer, and of Ordering of Bishops, Priests and Deacons; I believe the doctrine of the United Church of England and Ireland, as therein set forth, to be agreeable to the Word of God; and in Public Prayer and Administration of the Sacraments I will use the form in the said Book prescribed, and none other, except so far as shall be ordered by lawful authority."

From *Quodsi quis episcopus* to *relinquimus* as above; but added is *pronuntiaverit atque* before *subscripserit.*

[3] Canon 37 of 1865 (cf. note 1) runs:—

Ordinatis, dioecesin mutantibus, affirmationis praefatae pronuntiatio atque subscriptio coram episcopo dioecesano iterandae.

From *Si quis* to *debeat* as above; then: *praefatam affirmationem pronuntiaverit, eidemque subscripserit.*

[4] Canon 38 of 1865 (cf. note 1) has the rubric:—

Ordinati post affirmationis pronuntiationem atque subscriptionem praevaricantes a ministerio removendi.

The text is as above; only at the beginning we have: *postquam praefatam affirmationem pronuntiaverit eidemque subscripserit.*

39. *Ordinati sine congruo testimonio ac examine in beneficia non instituendi.*

Nullus episcopus ministrum quemvis ab alio episcopo ordinatum, in beneficium aliquod de caetero instituet, nisi qui literas ordinationis suae eidem ostenderit, et de morum honestate, vitaque probabili congruum testimonium, episcopo id postulante, exhibuerit; ac nisi debite examinatus, ministerio suo dignus inventus fuerit.

40. *Instituendi in beneficia simoniae suspicionem solenni jurejurando jussi avertere.*

Ad detestabile simoniae peccatum coercendum (quoniam spiritualium, et ecclesiasticarum functionum, officiorum, promotionum, dignitatum, et beneficiorum nundinatio in Dei conspectu odiosa est, et execranda) statuimus et ordinamus, ut archiepiscopus, omnesque et singuli episcopi, atque alii, quibuscunque jus competit admittendi, instituendi, conferendi, consecrandi, vel electionem confirmandi cujusvis archiepiscopi, episcopi, vel alterius personae ad ecclesiasticam aliquam functionem, dignitatem, promotionem, titulum, officium, jurisdictionem, locum, aut beneficium cum cura, vel sine cura, vel ad ecclesiasticum ullum munus quodcunque, ante omnem ejusmodi institutionem, collationem, consecrationem, vel confirmationem electionis respective faciendam, unumquemque deinceps admittendum, instituendum, conferendum, inaugurandum, aut confirmandum in vel ad archiepiscopatum, episcopatum, vel aliam spiritualem sive ecclesiasticam functionem, dignitatem, promotionem, titulum, officium, jurisdictionem, locum, aut beneficium cum cura, vel sine cura, vel ad ecclesiasticum ullum munus quodcunque, praesenti juramento oneret (quod utique per omnes, quorum intererit, in propriis personis, et non per procuratorem erit praestandum) sub modo et forma sequentibus: "Ego N. N. juro, me nullam simoniacam solutionem, stipulationem, vel promissum directe aut indirecte per me, vel per alium quemlibet (me conscio, aut consentiente) cuivis personae vel personis quibuscunque fecisse, pro vel de procuratione, vel acquisitione ecclesiasticae hujus dignitatis, loci, promotionis, officii, vel beneficii (exprimendo respective et nominatim locum illum, in quem admittendus, instituendus, conferendus, installandus, aut confirmandus erit), neque deinceps ullam ejusmodi solutionem, stipulationem, vel promissum absque mea notitia aut consensu factum, quovis tempore praestiturum. Ita me Deus adjuvet per Christum Jesum." [5]

41. *Beneficiorum pluralitas parcius dispensanda, et de personali dispensatorum residentia cautio ineunda.*

42. *Cathedralium ecclesiarum decani ad congruam residentiam tenentur.*

43. *Decani et praebendarii, in ecclesiis cathedralibus residentes, ad sedulam concionandi diligentiam tenentur.*

44. *Praebendarii beneficiati ad congruam in beneficiis suis residentiam tenentur.*

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[5] Canon 40 of 1865 (cf. note 1) is identical, except that in the rubric and text for *jusjurandum* or *juramentum* we have *affirmatio*; moreover, the declaration prescribed in the new canon is:—

I, A. B., solemnly declare that I have not made by myself, or by any other person on my behalf, any payment, contract, or promise of any kind whatsoever, which to the best of my knowledge or belief is simoniacal, touching or concerning the obtaining the preferment of . . .; nor will I at any time hereafter perform or satisfy, in whole or in part, any such kind of payment, contract, or promise made by any other without my knowledge or consent.

45. *Beneficiati concionatores, in beneficiis suis residentes, jugiter tenentur concionari.*

46. *Beneficiati non concionatores vicariam concionatoris operam jubentur singulis mensibus adhibere.*

47 *Beneficiati, a beneficiis suis legitime absentes, curatum concionatorem jubentur adhibere.*

48. *Ministri, nisi ex episcopi vel ordinarii approbatione, pro curatis non admittendi.*

Nulli curato aut ministro permittetur ullibi curae animarum inservire, nisi prius per episcopum dioecesanum, vel loci ordinarium episcopali jurisdictione praeditum examinatus ac admissus fuerit, ejusque rei testimonium manu episcopi et sigillo consignatum obtinuerit; habito semper respectu tum ad curae ipsius magnitudinem, tum ad personae admittendae habilitatem. Quinetiam dicti curati et ministri, siquando ex una dioecesi in alteram transierint, nequaquam ad curam ullam exercendam admittentur, nisi episcopi ejus dioeceseos, unde advenerint, vel loci ordinarii (ut supra) literis testimonialibus de ipsorum honesta conversatione, sufficientia, et conformitate ad ecclesiasticas regni Anglicani leges muniti accesserint. Nec vero eorum cuilibet licitum erit, pluribus quam uni ecclesiae aut capellae uno eodemque die ministrare, nisi forsan capella illa ecclesiae parochialis membrum existat, aut eidem unita, vel nisi ecclesia aut capella, cui taliter inserviet, judicio episcopi vel ordinarii (ut supra) curato alendo non sufficerit.

49. *Ministris ad concionandum non admissis glossae et paraphrases in publica scripturarum lectione interdictae.*

50. *Concionatores adventitii absque legitima missione ad concionandum non admittendi.*

51. *Advenae concionatores, nisi auctentico testimonio commendati, ad concionandum in ecclesiis cathedralibus non admittendi.*

52. *Concionatorum advenarum nomina in librum referenda.*

53. *Concionatorum mutuis oppositionibus pulpita non patebunt.*

Si quis concionator doctrinam ullam, ab alio concionatore in eadem vel vicina aliqua ecclesia traditam, particulariter aut nominatim ex professo impugnare, et pro concione refellere attentabit, priusquam episcopum dioecesanum de ea certiorem fecerit, et ejusdem mandatum acceperit, quam eo in casu rationem sequi debeat, cum alioqui ex publicis ejusmodi oppositionibus multum scandali et perturbationis populo oriri possit; oeconomi[6] vel pars laesa absque omni mora dicto episcopo illud significabunt, neque praefatum concionatorem patientur illum locum, quo semel abusus sit, deinceps occupare, nisi sancte receperit se ab omni ejusmodi contentionis materia in ecclesia temperaturum, donec episcopus de ea re ulterius statuerit: qui item quamprimum commode poterit in ea taliter procedet, ut parti laesae in eadem ecclesia, in qua oblatum est scandalum, publice satisfiat. Proviso semper, ut si altera pars appellationem interposuerit, eidem concionandi officium, pendente lite, sit interdictum.

54. *Concionatores schismatici licentiis suis mulctati.*

Si quis per archiepiscopum, aut episcopum ullum, vel alterutram academiam in praeteritum ad concionandum admissus, quovis deinceps tempore recusa-

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[6] = *churchwardens.*

verit legibus, institutis, et ritibus ecclesiasticis infra regnum Anglicanum stabilitis seipsum conformem reddere, eundem per episcopum dioecesanum, vel loci ordinarium quamprimum admoneri volumus, ut eorundem usui et debitae observationi se submittat. Quodsi, tali admonitione praemissa, infra mensem se minime reformarit, ejusdem facultatem sive licentiam ad concionandum eo ipso irritam esse et pro nulla habendam decernimus.

55. *Precationis formula a concionatoribus in concionum suarum ingressu imitanda.*

56. *Ministris mere concionatoribus precum publicarum lectio, et sacramentorum administratio bina annuatim injuncta.*

57. *A ministris non concionatoribus sacramenta efficaciter administrari.*

58. *Ministris sacra peragentibus superpelliciorum et epomidum usus injunctus.*

59. *Catechizandi diligentia ministris injuncta.*

60. *Confirmationis solennitas in triennali episcoporum visitatione celebranda.*

Cum solennis, antiqua, et laudabilis in ecclesia Dei consuetudo fuerit, ab ipsis usque apostolorum temporibus observata, ut episcopi quique parvulis baptizatis, et in catechismo christianae religionis instructis manus imponentes, super illis orarent ac benedicerent, quod vulgo confirmatio nominatur; cumque in triennali episcoporum visitatione mos sanctissimi istius operis peragendi in ecclesia per multas aetates obtinuerit; volumus et ordinamus, ut quilibet episcopus vel ejus suffraganeus in consueta visitatione sua morem et ritum illum in propria persona diligenter observet; quodsi tertio demum anno aliqua infirmitate impeditus visitationem suam personaliter obire nequeat, at saltem illud confirmationis munus illo proximo anno, prout commode poterit, nequaquam omittet.

61. *Catechumeni episcopo visitanti per ministrum ad confirmationem sistendi.*

62. *Ministri sine bannis rite indictis, vel legitime dispensatis matrimonium celebrare prohibiti.*[7]

63. *Ministri in locis exemptis sine bannorum justa indictione, vel dispensatione legitima matrimonium celebrare prohibiti.*

64. *Feriae a ministris solenniter indicendae.*

65. *Recusantes et excommunicati a ministris solenniter denunciandi.*

Ordinarii locorum, infra suas respective jurisdictiones, sollicite providebunt, ut tam excommunicati ex eo, quod divinis precibus intra hoc regnum Angliae publica auctoritate stabilitis, interesse pertinaciter recusaverint, quam ii etiam, praecipue qui melioris notae et conditionis extiterint, legitimaeque

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[7] Altered (not repealed) by the following canon of 1887–8 (cf. note 1):—

Ministri matrimonium nisi intra certas horas celebrare prohibiti.

Nullus Minister matrimonium inter quaslibet personas solennisabit nisi intra horas octavam ante meridianam et tertiam pomeridianam. Tempore Divinorum solennisari matrimonia non necesse est.

excommunicationis sententia propter insignem contumaciam, vel graviora aliqua crimina obstricti fuerint, nisi infra tres continuos menses post latam excommunicationis sententiam se emendaverint, et absolutionis gratiam fuerint consecuti singulis ex mensibus sequentibus publice in ecclesia tum parochiali, tum etiam cathedrali dioeceseos, in qua habitant, die aliquo dominico, ac tempore divinorum pro excommunicatis per ministrum denuncientur; quo reliqui et ab eorum communione declinent, et procliviores reddantur ad breve de excommunicato capiendo procurandum, quo illos ad officium et debitam obedientiam reducant. Quinetiam registrarii cujuslibet curiae ecclesiasticae de praemissis omnibus et singulis, quolibet anno infra festa S. Michaelis, et natalis Domini, archiepiscopum hujus provinciae in scriptis facient certiorem.

66. *Recusantium conversio a ministris sedulo elaboranda.*

67. *Aegrotantes a ministris sedulo visitandi.*

68. *Ministri baptismum, aut sepulturam denegare vetiti.*

Nullus minister aut renuet, aut detrectabit infantem ullum, qui die quovis dominico aut festivo ad ipsum in ecclesiam baptizandus adducetur, juxta ritum in libro precum publicarum editum baptizare; vel defunctum aliquem, qui in ecclesiam vel coemeterium inhumandi causa deferetur, data prius ejus rei notitia competente, sub modo et forma in dicto libro praefinitis sepelire. Quodsi hunc vel illum baptizare, aut sepulturae tradere recusaverit (nisi forte defunctus denunciatus fuerit majoris excommunicationis vinculo propter grave aliquod et insigne crimen obstrictus, neque de ejus poenitentia testari quisquam potuerit) a ministerio suo per episcopum dioecesanum trimestri spatio secludetur.

69. *Ministri baptismum in articulo necessitatis differre vetiti.*

70. *Ministri baptizatorum, nubentium, et sepultorum registrum conservare jussi.*

71. *Ministri concionum et coenae dominicae publicam religionem in privatas aedes invehere prohibiti.*

72. *Ministri publica jejunia, prophetias appellatas, et exorcismos privato ausu celebrare prohibiti.*

73. *Ministri conventicula privata conciliare prohibiti.*

74. *Ministris in vestitu gravitas praecepta.*

75. *Vitae sobrietas ministris praecepta.*

76. *Ministris a vocatione sua resilire interdictum.*

Nullus in diaconi aut presbyteri ordinem semel admissus quovis deinceps tempore ab eodem volens recedet, nec in vitae suae instituto pro laico se geret, sub poena excommunicationis; eorumque omnium nomina, si qui vocationem suam taliter abjicient, per oeconomos[8] *parochiarum, in quibus habitant, ad episcopum dioecesanum, vel loci ordinarium episcopali jurisdictione praeditum deferentur.*

(IV) **De paedagogis sive ludimagistris.**

77. *Publice vel privatim injussu ordinarii docere prohibitum.*

78. *Curati ad docendum habiles ab ordinario aliis praeferendi.*

79. *Ludimagistrorum officia.*

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[8] = *churchwardens.*

(V) **De ecclesiis, et rebus ecclesiasticis.**

80. *Libri sacri in ecclesiis parandi.*

81. *Baptisteria in ecclesiis paranda.*

82. *Mensae in sacrae coenae usum in ecclesiis parandae.*

83. *Pulpita idonea in ecclesiis paranda.*

84. *Cistae ad eleemosynarum custodiam in ecclesiis comparandae.*

85. *Ecclesiae sartae tectae conservandae.*

86. *Ecclesiae de tertio in tertium annum perlustrandae, et earum defectus regiis commissariis intimandi.*

87. *Terrarum et peculiorum ad ecclesias spectantium inventaria conficienda, et in episcoporum archivis asservanda.*

88. *Ecclesiarum religio profanis usibus non polluenda.*

(VI) **De ecclesiarum oeconomis,[9] et inquisitoribus,[10] sive assistentibus.**

89. *Oeconomorum electio, et rerum ecclesiasticarum procuratio.*

Omnes ecclesiarum oeconomi, sive inquisitores parochianorum et ministri sui unito consensu, siquidem id fieri possit, eligentur. Qui si in tali electione dissenserint, tum ministro licebit unum eligere, parochianis alterum; nec quisquam pro oeconomo habendus erit, nisi quem ejusmodi consensus sive conjunctus, sive divisus elegerit; neque iidem etiam in officio suo ultra annum, nisi de integro ad modum praedictum electi, permanebunt. Omnesque oeconomi ad dicti anni terminum vel saltem infra ejusdem termini mensem unum pecuniae tum acceptae tum expensae, sive in reparationes, sive in alios quoscunque ecclesiae usus veram et particularem rationem ministro et parochianis reddent; quinetiam officio suo abeuntes, parochianis cedent quicquid pecuniae aut alterius rei cujuscunque ad ecclesiam sive parochiam jure pertinentis, in ipsorum manibus residuum supererit, ut per eos in succedentium oeconomorum custodiam per billam indentatam transferatur.

90. *Inquisitorum sive assistentium electio, eorumque cum oeconomis officii communitas.*

Ecclesiarum omnium oeconomi, sive inquisitores, adhibitis in singulis parochiis duobus, tribus, aut etiam pluribus discretis hominibus, qui per ministrum, et oeconomos, siquidem inter eos convenire poterit, alias per loci ordinarium pro assistentibus eligentur, sedulo invigilabunt, ut parochiani omnes ecclesias suas diebus dominicis et festivis debite frequentent, atque in iisdem per integrum tempus rei sacrae perdurent; quo item tempore neminem in ecclesia ejusdemve porticu aut coemeterio deambulare, vel otiari, aut garrire patientur; si quos autem compererint remissius aut negligentius ecclesiam adire, nulla magna aut ardua absentiae suae causa constante, eosdem serio admonebunt, et, nisi debite admoniti se emendaverint, ad loci ordinarium deferent. Horum autem oeconomorum, et inquisitorum, vel assistentium annuam electionem in paschali hebdomade celebrandam decernimus.

(VII) **De ostiariis sive clericis parochialibus.**

91. *Clericos parochiales eligendi jus ministro cedet.*

Nullus in parochialis clerici, quem vocant, locum vacantem infra civitatem Londinensem, vel alibi infra provinciam Cantuariensem eligetur, nisi per rectorem aut vicarium, vel defectu rectoris aut vicarii, per ejusdem ecclesiae

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[9] =*churchwardens.*

[10] Cf. § 48, note 2.

ministrum pro tempore existentem; quam electionem dictus rector, vicarius, aut minister subsequente die dominico tempore divinorum parochianis suis denunciabit. Omnis autem ejusmodi clericus parochialis annos ad minus viginti natus erit, et de vita probabili, ac idonea legendi, scribendi, et cantandi, quoad ejus fieri potest, scientia dicto eligenti cognitus. Idemque clerici taliter electi stipendia sua antiquitus consueta, absque dolo aut diminutione, vel ab oeconomis, ad tempora hactenus usitata, vel ex propria collectione percipient, juxta parochiae cujusque ritum, ac consuetudinem maxime inveteratam.

(VIII) **De curiis ecclesiasticis ad archiepiscopi jurisdictionem spectantibus.**

92. *Testamentorum probatio, justa bonorum notabilium summa constante, praerogativarum curiae duntaxat competit.*

93. *Testamentorum probatio, justa bonorum notabilium summa non comparente, ordinariis vendicatur.*

94. *In curias de arcubus, et audientiae extra proprium territorium (nisi consentiente episcopo dioecesano) nemo citandus.*

95. *Duplices querelae, nisi justi gravaminis facta fide, in curiis archiepiscopi non concedendae.*

96. *Inhibitiones in causis instantiae absque advocati subscriptione non concedendae.*

97. *Inhibitiones in causis correctionis, nisi gravamine judici prius cognito, non concedendae.*

98. *Inhibitiones schismaticis, nisi subscribentibus, non concedendae.*

99. *Intra gradus prohibitos matrimonium contractum ipso jure nullum.*

100. *Minores* 21. *annis absque parentum consensu matrimonium contrahere prohibiti.*

101. *Facultates pro bannis matrimonialibus omittendis, per quos, et quibus sint concedendae.*

102. *In facultatibus pro bannorum omissione concedendis cautio interponenda, et sub quibus conditionibus.*[11]

103. *Eaedem conditiones ob majorem cautelam jurejurando suffultae.*

104. *Parentum consensus viduis contrahentibus remissus.*

105. *Pro conjugio dirimendo nuda partium confessio non audienda.*

106. *Sententiae divortii et separationis non nisi pro tribunali ferendae.*

107. *Separatis, eorum altero superstite, nova copula interdicta.*

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[11] Altered (not repealed) by the following canon of 1887–8 (cf. note 1):—

De facultatibus pro matrimonio absque bannis celebrando.

Omnis facultas pro matrimonio absque bannis solennisando hanc conditionem verbis conceptis complectetur scilicet istud matrimonium intra horas octavam ante meridianam et tertiam pomeridianam celebrari debere.

108. *Sanctio in judices contra praemissa delinquentes.*

(IX) **De curiis ecclesiasticis ad episcopos, et archidiaconos spectantibus.**

109. *Peccata et scandala notoria in curiis ecclesiasticis denuncianda.*

Si qui per manifestum adulterium, stuprum, incestum, ebrietatem, jurandi consuetudinem, lenocinium, foenerationem, vel aliam quamcunque vitae turpitudinem aut nequitiam fratres suos offenderint; ecclesiarum oeconomi, et inquisitores, sive assistentes in proximis praesentationibus suis ad ordinarios omnium et singulorum ejusmodi delinquentium nomina fideliter deferent, ut legum severitate pro meritis possint castigari. Tales autem notorii delinquentes ad sacram coenam, donec mores in melius commutarint, nequaquam admittentur.

110. *Schismatici in curiis detegendi.*

Si oeconomi ecclesiarum, et inquisitores, sive assistentes de aliquo infra suam parochiam vel alibi resciverint, qui vel verbo Dei legendo, aut sincere praedicando, vel constitutionum praesentium executioni obstare conabitur, vel etiam usurpatae ulli et extraneae potestati, hujus regni legibus jamdiu merito repudiatae, atque abolitae, favebit atque adhaerebit, vel dogma aliquod papisticum ac erroneum astruet, aut tuebitur; dicti oeconomi, et inquisitores sive assistentes episcopo dioecesano, vel loci ordinario eundem detegent, et indicabunt, ut poenis et censuris per ecclesiasticas sanctiones irrogatis coerceatur.

111. *Precum divinarum perturbatores in curiis detegendi.*

112. *Puberes in festo Paschatis non communicantes in curiis detegendi.*

113. *Peccata notoria ministris jus est denunciare, privatim confessa retegere, nefas.*

Quoniam saepenumero contingit, ecclesiae oeconomos, et inquisitores sive assistentes aliosque e laicis, quibus id officii, munerisque incumbit, ut per admonitiones, reprehensiones, et delationes ad ordinarios peccatum et impietatem coerceant, partim prae timore potentiorum, partim prae incuria in hoc officio praestando remissiores esse, quam par est, si horum temporum licentiam consideremus; statuimus et ordinamus, ut licitum deinceps sit singulis lectoribus ac vicariis, aut (ipsis legitime absentibus) eorum curatis, et substitutis, cum ecclesiae oeconomis et assistentibus, reliquisque supra nominatis, in criminibus ad tempora inferius praestituta detegendis, operas suas conjungere; siquidem dicti oeconomi et assistentes crimina et culpas enormes in suis parochiis notorias deferre voluerint. Quodsi ii facere detrectarerint, tum licebit singulis rectoribus et vicariis, aut (illis ut supra absentibus) eorum curatis ac substitutis, omnia ejusmodi crimina, de quibus dicti officiarii habent inquirere, aut alia quaecunque ipsis (utpote quibus praecipua cura peccati infra suas parochias coercendi incumbit) corrigenda videbuntur, temporibus constitutis, vel alias, ubi commodum judicaverint, ad ordinarios suos deferre et praesentare. Proviso semper, quodsi quis peccata sua occultiora alicui ministro priratim confiteatur, conscientiam suam exonerando, quo ab illo spiritualem consolationem et levamen percipiat, eum hac nostra constitutione nullatenus teneri volumus; quin potius stricte illi praecipimus, ne ejusmodi aliquod crimen aut delictum fidei ac taciturnitati suae taliter commissum cuivis personae aliquando retegat, nisi sit ex eo genere criminum, quorum occultatio ex legibus hujus regni sit capitalis: qui contrafecerit, eo ipso irregularis esto.

114. *Recusantes per ministros in curiis detegendi.*

115. *Ne ministris aut oeconomis fraudi sit criminosorum detectio.*

116. *Oeconomi ad binas tantum detegendi vices annuatim tenentur.*

117. *Oeconomi, binis detegendi vicibus debite perfuncti, non sunt de reliquo in curiam vocandi.*

118. *Anni superioris oeconomi detectiones suas tenentur exhibere, priusquam recens electi munus suum adeant.*

119. *Detectionum schedulae fide bona, non perfunctorie et pro forma conficiendae.*

120. *Ne qua citatio, nisi expressis citandorum nominibus, e curiis emittatur.*

121. *Ne quis in pluribus curiis super eodem crimine cogatur respondere.*

122. *Sententiae pro ministris a beneficio vel officio removendis, non nisi per episcopum pronunciandae.*

123. *Actus judiciales non nisi publica, et auctentica manu expediendi.*

124. *Curiarum sigilla, unica.*

125. *Curiarum sedes opportuna.*

126. *Curiae inferiores testamenta originalia ad episcoporum archiva jubentur transmittere.*

(X) **De judicibus ecclesiasticis.**

127. *Judicum ecclesiasticorum qualitas.*

Nullus inposterum ad officium cancellarii, commissarii, aut officialis admittetur ad jurisdictionem quamlibet ecclesiasticam exercendam, nisi qui vicesimum sextum ad minus aetatis suae annum compleverit, et qui in jure civili et canonico eruditus existat, sitque ad minimum magister artium, aut in jure bacalareus, ac in praxi et causis forensibus laudabiliter exercitatus, necnon recte affectus, et religioni studiose deditus, de cujus vita et moribus nullus sinister sermo audiatur; ac insuper nisi priusquam talis cujusque officii functionem, aut exercitium adeat, in supremam regis auctoritatem in causis ecclesiasticis coram episcopo, vel publice in curia juraverit; ac religionis articulos in synodo, anno 1562, *communiter conclusos, subscriptione sua comprobaverit; et etiam juratus receperit se integre et ex aequo, pro captu suo, jus redditurum, absque omni intuitu vel gratiae, vel mercedis; quorum utique juramentorum, ac subscriptionis per registrarium tum praesentem actum conscribetur. Haud secus omnes cancellarii, commissarii, officiales, registrarii, aliique quotquot jurisdictionis, sive ministerii ecclesiastici locum aliquem in praesenti possident, aut exercent, citra festum Nativitatis proxime venturum, coram archiepiscopo, aut episcopo vel etiam in aperta curia, sub quo, et in qua muneribus suis funguntur, eadem juramenta subire, et, prout superius dictum est, subscribere tenebuntur. Quod si facere recusaverint, a munerum suorum executione eousque suspendentur, quoad juramenta praemissa, et subscriptionem, ut supra, praestiterint.*

128. *Qualitas deputandorum.*

(XI) **De procuratoribus.**

129. *Procuratores, nisi de partis mandato auctentico, causas attingere prohibiti.*

130. *Procuratores, sine advocati alicujus consilio, causas retinere prohibiti.*

131. *Procuratores, inconsulto advocato, in causa concludere pròhibiti.*

132. *Procuratorium in causis testamentariis juramentum prohibitum.*

133. *Procuratorum vox importunior in curiis cohibita.*

(XII) **De registrariis.**

134. *Registrariorum excessus coerciti.*

135. *Feodorum, quae juris ecclesiastici administris debentur, census debet esse statarius.*

136. *Statarius feodorum census in tabulas relatus, publice in consistoriis et archivis proponendus.*

137. *Feoda pro ordinum literis, aliisque licentiis episcopo exhibendis, tantum dimidia, praeterquam in prima episcopi visitatione, persolvenda.*

(XIII) **Apparitores.**

138. *Apparitorum excessus coerciti.*

(XIV) **Auctoritas synodorum.**

139. *Synodus nationalis, ecclesia repraesentativa.*

Quisquis de caetero affirmabit, sacrosanctam hujus nationis synodum in Christi nomine, ac de regis mandato congregatam, non esse repraesentative veram ecclesiam Anglicanam, excommunicetur; nequaquam absolvendus, priusquam resipuerit, et impium hunc errorem publice revocarit.

140. *Synodi acta tam absentes, quam praesentes obligant.*

141. *Synodi auctoritati derogantes, coerciti.*

Quisquis de caetero affirmabit, dictam sacram synodum, congregatam ut supra, fuisse coetum ex talibus conflatum, qui in pios et religiosos evangelii professores conspirabant, ac proinde tum ipsos, tum ipsorum acta in canonibus sive constitutionibus circa causas ecclesiasticas ex regis auctoritate, ut praedictum est, condendis ac sanciendis rejici, ac contemni debere, quantumvis eaedem per dictam potestatem regiam, ac supremam ejusdem auctoritatem ratihabitae, confirmatae, ac injunctae sint, excommunicetur; haudquaquam absolvendus, priusquam resipuerit, ac impium hunc errorem publice revocarit.

XIII. Examples of instruction to and commission of a rural dean in the 19th century.

1. Instruction to the rural deans of the diocese of Canterbury, 1833.[a]

The rural dean is required to visit once in the year at such time as shall be appointed by the archdeacon the several parishes within his deanry; and to make a return to the archdeacon, for the information of the archbishop, in regard to the several particulars hereinafter mentioned:

The condition of the churches, chapels, chancels and churchyards; and the books, ornaments, and utensils, thereto belonging.

The preservation of the parish registers, the making due entries therein, and the regular transmission of the annual return, to the registry at Canterbury.

The due performance of Divine Service in the church; the administration of the Lord's Supper; and the average number of communicants.

The residence of the curates of non-resident incumbents; the state of the

[a] From Dansey, *Horae Decanicae Rurales* II, 347.

national or parochial schools; and in general, the education of the poor, in connexion with the established church.

The state of the houses, buildings and glebe-lands, attached to benefices; including all additions to, or alterations, decays, or dilapidations, in, the premises.

It will be advisable that the rural dean should request some beneficed clergyman, residing in the deanry, to assist him in his visitation.

The rural dean is also required to give information to the archdeacon of the avoidance of any benefice within his deanry, and of the measures to be taken to secure the performance of the parochial duties during the vacancy; and also to report to him, as occasion may require, on all matters concerning the church or the clergy, which the ordinary ought to know.

2. *Rural Dean's Commission*, as now used in the diocese of Salisbury.

A, by Divine Permission Bishop of Salisbury, to our well beloved and reverend brother . . . Clerk . . . of . . . in the . . . portion of the Deanery of . . . and our Diocese of Sarum Greeting. Whereas We have thought fit upon mature consideration to continue the ancient authority and use of Rural Deans, in order that by persons of the best ability and integrity in each of the ecclesiastical divisions called Deaneries, we may be regularly and fully informed of the condition in which all things are in all parts of our said Diocese. We, therefore, having a good account and opinion of the piety and learning, and confiding in the diligence and prudence of you the said . . . do by these presents constitute and appoint you to be Rural Dean of the . . . portion of the Deanery of . . . aforesaid, during our will and pleasure, requiring of you to observe, inquire into, and report to Us, all things and persons within all the Parishes of the portion of the said Deanery to you assigned, concerning which it may be proper for Us or useful to our Diocese that we should have information. And in order that you may be prepared to make the said reports to Us intelligently and upon sure grounds, We do especially desire, charge, and empower you on our behalf to visit personally and examine every Church, Chapel, Chancel, Church and Chapel-yard, with the books, ornaments, and utensils thereto belonging, and the glebe-house, buildings, and lands of the Incumbents, with their fences, and boundaries within the aforesaid portion of the said Deanery, according to the tenor of the Articles of Inquiry sent to you from time to time. And We further enjoin you after such examination made, to leave in writing under your seal and signature an order at each place specifying the things which you shall judge wanting to be repaired, amended or done there, and at the end of the said order to require that every such paper be, by such a limited time as you shall think proper, returned to you, with a certificate at the bottom of it, signed by the Minister and Church or Chapel-wardens, that all things are prepared and done according to what is therein directed. And We also authorize you once in every year, and at any other time when you may see occasion so to do to inspect the charitable foundations as well as National or other Schools, and Parochial Libraries in connexion with the Established Church within the aforesaid portion of the said Deanery, and to supply us with such information respecting their actual state and management as our queries may demand or your judgment suggest. And We likewise give you full power to examine the Licences of all Stipendiary and Assistant Curates officiating within your jurisdiction, and desire that you will give immediate notice to Us of any who shall officiate as Curates without being duly licenced. And we also desire you to call the Clergy of the aforesaid portion of the said Deanery together whenever we shall appoint you so to do, and diligently to disperse such orders as shall be sent to you for that purpose.

And furthermore, We require you, as soon as the avoidance of any living within the aforesaid portion of the said Deanery shall have come to your knowledge, to notify the same to Us in order that due inquiry may be made into the state of the vacant benefice, and sequestration issued out of the Ecclesiastical Court.

And especially We enjoin you to report unto Us all undue disposal of Church Property in the hands of Churchwardens, and to require that in every Parish a distinct Churchwardens' Book be kept, and in it an entry made of all the moveable Church Property entrusted to the care of those officers.

And lastly, We desire with the view to our being regularly supplied with the information required upon all the foregoing matters, that you will carefully fill up, with particular and distinct answers under the name of each Parish, the several queries contained in your Articles of Inquiry (with which we will cause you from time to time to be supplied) subjoining thereto such additional observations as you may think needful, and that you will with all convenient speed transmit the same under your seal and signature to Us at our Palace at Sarum, to the intent that we may take such measures as the circumstances of the several returns and the general welfare of our Diocese may require.

In doing of all which things faithfully you the said Rural Dean will very much assist us your Bishop in the discharge of the great duty incumbent upon Us.

In Witness whereof We have caused our seal which we use in this behalf to be to these presents affixed.

Given under our hand this . . . day of . . . in the year of Our Lord . . . and in the . . . year of our Consecration.

XIV. Conspectus of literature.

I. Collections of documents.

1. Documents issued mainly by ecclesiastical authorities.

Athon (Actona), see Lyndwood.

Cardwell, Edward. *Documentary annals of the Reformed Church of England; being a Collection of Injunctions, Declarations, Orders, Articles of Inquiry etc. from* 1546 *to* 1716. Oxford, 1839. 2 vols. Ditto. *Synodalia, a collection of Articles of Religion, Canons and Proceedings of Convocations in the Province of Canterbury from* 1547 *to* 1717, *with notes historical and explanatory.* Oxford, 1842.

Haddan, Arthur West, and Stubbs, William. *Councils and Ecclesiastical Documents relating to Great Britain and Ireland.* Oxford, 1869 ff. 3 vols. (Relates only to the early middle age. The third volume, concerning England proper, comes down to the year 870.)

Johnson, John. *A collection of the Laws and Canons of the Church of England from its first foundation to* 1519. *Translated into English with explanatory notes.* London, 1720. New Ed., Oxford, 1850. 2 vols.

Lyndwood, Gulielmus. *Provinciale seu Constitutiones Angliae, continens Constitutiones Provinciales XIV archiepiscoporum Cantuariensium, viz. a Stephano Langtono ad Henricum Chichleium* (glossed by Lyndwood; completed in 1433, printed for the first time at Oxford about 1470–80). Last Ed., Oxford, 1679.—*Cui adiiciuntur constitutiones Legatinae Dom. Othonis et Othobonis* (glossed by John of Actona. In the gloss., p. 129, to *Quod habita possessione* he mentions . . . *Johannem de Stratford . . . , nuper Wintoniensem Episcopum, jam vero Cantuariensem* . . . Stratford became archbishop of Canterbury in 1333. Cf. J. Brownbill in *The Antiquary*, XXIV, 164). —1 vol.

Sparrow, Anthony. *A Collection of Articles, Injunctions, Canons, Orders, Ordinances, and Constitutions Ecclesiastical, with other Publick Records of the Church of England* . . . . (from the years 1547–1640). London, 1661. 4th Ed., London, 1684.

Spelman, Henry. *Concilia, Decreta, Leges, Constitutiones, in Re Ecclesiarum Orbis Britannici ab initio Christianae ibidem Religionis, ad nostram usque aetatem.* Intended to be completed in 3 vols. There appeared vol. I (down to 1066), London, 1639; vol. II (edited by the grandson, Charles Spelman, coming down to 1530), London, 1664.

Wilkins, David. *Concilia Magnae Britanniae et Hiberniae. Accedunt constitutiones et alia.* London, 1737. 4 vols.

For the letters of the popes, with Philipp Jaffé, *Regesta Pontificum Roman-*

orum (years 64–1198), 2nd Ed. (edited by S. Löwenfeld, F. Kaltenbrunner, P. Ewald), 2 vols., Leipzig, 1885, and August Potthast, *Regesta Pontificum Romanorum* (years 1198–1304), 2 vols., Berlin, 1873–5, is to be compared W. H. Bliss, *Calendar of Entries in the Papal Registers relating to Great Britain and Ireland* (as yet only 1 vol. has appeared, 1893, embracing the years 1198–1304; the papal registers are incomplete).

[On the date of the extant archiepiscopal and episcopal registers in England (the oldest beginning in 1218) see Stubbs, *Const. Hist.* I, 680, note 4 c 13 § 166; Raine, Introduction to *Rer. Brit. Scr.* No. 61; Martin, *Rer. Brit. Scr.* No. 77, vol. I p. xli.]

2. Documents issued mainly by civil authorities.

(*a*) Collections of laws.

Record Commission (B. Thorpe). *Ancient Laws and Institutes of England; comprising laws enacted under the Anglo-Saxon Kings from Aethelbirht to Cnut with an English Translation of the Saxon; the Laws called Edward the Confessor's; the Laws of William the Conqueror and those ascribed to Henry I: also Monumenta Ecclesiastica Anglicana, from the 7th to the 10th century; and the ancient Latin version of the Anglo-Saxon Laws. With a compendious glossary.* 1840. 2 vols.

Schmid, Reinhold. *Die Gesetze der Angelsachsen.* In the original language with translation, explanations and a glossary. 2nd Ed. Leipzig, 1858. 1 vol. [Supplementary thereto: Liebermann, *Zu den Gesetzen der Angelsachsen*, in the *Zeitschrift der Savigny-Stiftung*, vol. V (Weimar, 1885), Germ. Abtheilung, pp. 198 ff.]

Record Commission (Tomlins, Raithby, Caley, Elliott). *Statutes of the Realm.* London, 1810–32 (a collection of royal charters from 1100 and of the English statutes from the middle of the thirteenth century to 1714, exclusive of parliamentary ordinances during the first revolution and of Cromwell's ordinances. According to the introduction, p. 31, only the laws printed in earlier collections and the *principal* of the other enactments recorded with certainty are admitted; and it is expressly stated that *any Decision upon the Degree of Authority, to which any new Instrument may be entitled, as being a Statute or not, is entirely disclaimed.* For the 12th and 13th centuries see, as supplementary, especially Stubbs, *Select Charters.*

Scobell, Henry. *A Collection of Acts and Ordinances of general use, made in the Parliament begun and held at Westminster the 3rd of Novbr.* 1640 *and since, unto the Adjournment of the Parliament begun and holden the 17th of September* 1656 (adjourned on 26th June, 1657), *and formerly published in Print, which are here printed at Large with Marginal Notes, or* (when of less interest) *Abbreviated.* London, 1658. (Contains also titles of earlier printed acts and ordinances belonging to the time in question, which are not here included even in shortened form.) A more complete collection relating to the time of the first revolution is a *desideratum.*

For the time since 1714 there are several private collections, *e.g.* those of Danby Pickering, with continuations, and Edlyne Tomlins. For the years 1870 ff. see the official *Public general Statutes.*

(*b*) Parliamentary proceedings in early times.

Rotuli Parliamentorum ut et Petitiones et Placita in Parliamento. 6 vols. (Vol. 1: *Ed. I* and *II;* vol. 2: *Ed. III;* vol. 3: *Ric. II* and *Hen. IV;* vol. 4: *Hen. V* and *VI;* vol. 5: *Hen. VI* and *Ed. IV;* vol. 6: *Ed. IV, Ric. III* and *Hen. VII.*)

Cf. also Charles Henry Parry, *The Parliaments and Councils of England, chronologically arranged from . . . William I . . . to* 1688. London, 1839. See, further, Parry's preface.

(*c*) Miscellaneous.

Birch, Walter de Gray. *Cartularium Saxonicum, A collection of charters relating to Anglo-Saxon History.* London. Appearing in numbers from

1883. Three vols. (years 430–975) have appeared. (Contains the documents also printed in Kemble and Thorpe; gives genuine and spurious documents, purposely abstaining from passing judgment thereon, and reserving this subject to a table at the end of the work.)

Kemble, John Mitchell (*English Historical Society*). *Codex Diplomaticus Aevi Saxonici.* London, 1839–48. 6 vols. With which compare:—

Thorpe, Benjamin. *Diplomatarium Anglicum Aevi Saxonici. A Collection of English Charters, from the Reign of King Aethelberht of Kent, 605, to that of William the Conqueror . . . with a translation of the Anglo-Saxon.* London, 1865. (Chiefly after Kemble, with a few additions.)

Prynne, William. *An exact chronological vindication and historical demonstration of our British, Roman, Saxon, Danish, Norman, English kings supreme ecclesiastical jurisdiction . . .* 3 vols. London, 1665–8. Usually quoted as Prynne, *Records.* (Contains numerous documents reprinted. Vol. I: ancient times to 1199; vol. II: 1199–1272; vol. III: 1199–1307.)

Rymer and Sanderson. *Foedera, Conventiones, Litterae et cuiuscunque generis Acta publica inter Reges Angliae et alios quosvis imperatores, reges, pontifices, principes vel communitates ab anno* 1101 *usque ad* 1654. (Appendix: Letters of Queen Mary of England.) 20 vols. London, 1704–35.—Second edition, London, 1727–35. 20 vols.—Third edition, Haag, 1740–45. 9 vols., and a 10th containing *Index* and *Abrégé Historique des Actes Publics d'Angleterre.*—Fourth edition (for the *Record Commission*), London, 1816–30, 3 vols. (1066–1377). Vol. I, 1: *Wilh. I–Hen. III;* vol. I, 2: *Ed. I;* vol. II, 1: *Ed. II;* vol. II, 2: *Ed. III* 1327–44; vol. III, 1: *Ed. III* 1344–61; vol. III, 2: *Ed. III* 1361–77. The new edition was then discontinued, and only the already completed part of vol. IV, containing documents from 1377–83, published.—See Hardy, Thomas Duffus. *Syllabus of the Documents relating to England and other Kingdoms contained in the collection known as 'Rymer's Foedera.'* London, 1869. 2 vols. and a supplement. (Contains accounts of the several editions of Rymer, short chronological notices of the documents and supplementary matter.)

Record Commission (Henry Cole). *Documents illustrative of English History in the 13th and 14th centuries, selected from the Records of the Department of the Queen's Remembrancer of the Exchequer.* London, 1844.

Stubbs, W. *Select charters and other illustrations of English constitutional history.* 4th Ed. Oxford, 1881. 5th Ed. Oxford, 1884.

II. Church history.

1. Chronicles.

A view of the separate editions and collections of English chroniclers which were printed up to the end of the 18th cent. and of their contents will be found in *Monumenta Historica Britannica* I, 3 ff., edited by Petrie, Sharpe, Hardy. 1848. A complete account of the materials for the earlier history of England is given by Thomas Duffus Hardy, *Descriptive Catalogue of Materials relating to the History of Great Britain and Ireland* (*Rer. Brit. Scr.* No. 26). In vol. I (pt. 2) pp. 681 ff. a list is given of the materials printed up to 1862 (in some cases going beyond the limit named, viz. the end of the reign of Henry VII), the editions being specified. This catalogue now needs supplementing, especially from the collection of *Rerum Britannicarum Medii Aevi Scriptores* (from No. 27 onwards); see under *c.* Cf. also F. Liebermann, *Über ostenglische Geschichtsquellen des* 12., 13., 14. *Jhdts., besonders den falschen Ingulf,* 1893 (in *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde,* XVIII, 225 ff.)

(*a*) The most important of the older collections of chronicles are:—

1. *Rerum Britannicarum Scriptores vetustiores.* Heidelberg, 1587.
2. H. Savile. *Rerum Anglicarum Scriptores post Bedam praecipui.* London, 1596, Frankfurt, 1601.
3. G. Camden. *Anglica, Normannica, Hibernica, Cambrica.* Frankfurt, 1602.

4. R. Twysden and J. Selden. *Historiae Anglicanae Scriptores decem.* London, 1652.
5. J. Fell and G. Fulman. *Rerum Anglicarum Scriptorum veterum tomus I.* Oxford, 1684.
6. T. Gale. *Historiae Anglicanae Scriptores quinque.* Oxford, 1687.
7. T. Gale. *Historiae Britannicae, Saxonicae, Anglo-Danicae Scriptores quindecim.* Oxford, 1691.
8. Wharton, Henr. *Anglia Sacra, sive Collectio Historiarum, partim antiquitus, partim recenter scriptarum de Archiepiscopis et Episcopis Angliae, a prima fidei Christianae susceptione ad annum* 1540. London, 1691. 2 vols.

(*b*) Of later collections:—

1. The collection of the Surtees society. 1834 ff.
2. The collection of the Camden society. 1838 ff.
   Cf. here Nichols, John Gough. *A Descriptive Catalogue of the first series of the Works of the Camden Society, stating the nature of their principal contents, the periods of time to which they relate, the dates of their composition, their manuscript sources, authors and editors.* Westminster, 1872.
3. The collection of the English historical society. 1838 ff.
4. Giles. *Patres Ecclesiae Anglicanae.* London, Oxford, Paris, 1843 ff.
5. *Monumenta Historica Britannica.* Official; edited by Petrie, Sharpe, Hardy. 1848. Only 1 vol. has appeared.
6. The collection of the Caxton society.
7. F. Liebermann, *Ungedruckte Anglo-Normannische Geschichtsquellen.* Strassburg, 1879.
8. F. Liebermann and R. Pauli. *Ex rerum Anglicarum Scriptoribus saec. XII et XIII,* in *Mon. Germ. Hist., Scriptores,* vols. XXVII, XXVIII. Hannover, 1885, 1888.
9. *Rerum Britannicarum Medii Aevi Scriptores or Chronicles and Memorials of Great Britain and Ireland during the Middle Ages.* A comprehensive and critical edition of the several chronicles etc. Published (from 1857 onwards) by the authority of the lords commissioners of the treasury, under the direction of the master of the rolls.

(*c*) In this last mentioned collection, *Rerum Britannicarum Medii Aevi Scriptores,* there have already appeared:[1]—

No.	*Editor.*	*Title, etc.*
1	Hingeston, F. C.	*The Chronicle of England by John Capgrave.* Relates to the time from the creation of the world to 1417; written 1462–64. Capgrave was born in 1393, was provincial of the friars hermits in England and probably prior of the friary at Lynn; he died 12th Aug. 1464. Cf. No. 7.
2	Stevenson, J.	*Chronicon Monasterii de Abingdon.* 2 vols. Mutilated at the beginning, it commences with a short account of the introduction of Christianity into Britain and goes down to the year 1190. Written by a monk of this monastery. The MS, on which the printed text is based, appears to contain a second edition of this

[1] The list is as given at the end of the volumes of the series. The notes are only sketched in outline; they are drawn partly from the source just indicated, partly from the critical prefaces or from Hardy (No. 26 of the collection). For further information the reader is referred to the two latter sources.

No.	Editor.	Title, etc.
		chronicle, issued about the middle of the thirteenth century. The various readings derived from a MS. which contains the first edition are given.
3	Luard, H. R.	*Lives of Edward the Confessor.*—I. *La estoire de Seint Aedward le Rei.* A poem in Norman French dedicated to 'Alianore, riche Reine d'Engleterre,' wife of Henry III; written probably in 1245; author unknown.—II. *Vita Beati Edvardi Regis et Confessoris.* An anonymous Latin poem; written between 1440 and 1450 by command of Henry VI. Of no importance from a historical standpoint.—III. *Vita Aeduuardi Regis qui apud Westmonasterium requiescit.* Author anonymous; probably written for queen Edith between 1066 and 1074.
4	Vol. II Brewer, J. S. Vol. II Howlett, R.	*Monumenta Franziscana.* Vol. I: *Thomas de Eccleston de Adventu Fratrum Minorum in Angliam. Adae de Marisco Epistolae. Registrum Fratrum Minorum Londoniae.* Vol. II: *De Adventu Minorum, re-edited with additions. Chronicle of the Grey Friars. The ancient English version of the Rule of St. Francis. Abbreviatio Statutorum*, 1451 *etc.*
5	Shirley, W. W.	*Fasciculi Zizaniorum Magistri Johannis Wyclif cum Tritico.* Ascribed to Thomas Netter of Walden, from 1414 provincial of the carmelites in England; the whole, however, cannot be by him. The only contemporaneous account of the rise of the lollards.
6	Turnbull, W. B.	*The Buik of the Croniclis of Scotland; or a Metrical Version of the History of Hector Boece; by William Stewart.* 3 vols. A metrical translation of a Latin prose chronicle; of the first half of 16th cent.; beginning with the earliest legends, ending with the death of Jas. I of Scotland (1437).
7	Hingeston, F. C.	*Johannis Capgrave Liber de Illustribus Henricis.* Written about the middle of the 15th century, shortly after 1446. The first part consists of six chapters, each containing a short sketch of an emperor of the name of Henry; the second treats of English kings named Henry (Henry I–VI); the third, of famous Henries in various countries.
8	Hardwick, C.	*Historia Monasterii S. Augustini Cantuariensis*, by Thomas of Elmham, formerly monk and treasurer of that foundation. Relates to the time from the arrival of Augustine in Kent to 1191. After 804, almost made up of documents. A *Chronologia Augustinensis* is printed as an introductory conspectus. The author was probably Thomas of Elmham. The book was written *circ.* 1414. The documents contained are in part spurious; this is especially the case with those touching old privileges of the monastery.
9	Haydon, F. S.	*Eulogium* (*Historiarum sive temporis*), a chronicle extending from the creation to 1366. 3 vols. Almost certainly by a monk of the abbey of Malmesbury; the larger portion was completed in 1362, other portions were added till *circ.* 1367. A continuation carrying on the history to 1413 was appended by an unknown author in the first half of the 15th cent.
10	Gairdner, J.	*Memorials of Henry VII.* Contains: 1. *Bernardi Andreae Vita Henrici VII*, 1457–97. (Bernard André

No.	Editor.	Title, etc.
		of Toulouse was Henry's poet laureate and historiographer). 2. *Ejusdem Annales Henrici VII*, 1504–5 and 1507–8. 3. *Les douze triomphes de Henry VII*, written in 1497, probably also by Bernard André. 4. *Journals and reports of ambassadors*, years 1488–90 and 1505. 5. A Narrative of the Reception of Philip King of Castile in England in 1506. 6. Various other documents of the time, given as appendices.
11	Cole, C. A.	*Memorials of Henry the Fifth.*—I. *Vita Henrici Quinti, Roberto Redmanno auctore.* II. *Versus Rhythmici in laudem Regis Henrici Quinti.* Probably written by a monk of Westminster, contemporary with Henry V. III. *Elmhami Liber Metricus de Henrico V.* By a contemporary writer, Thomas Elmham.
12	Riley, H. T.	*Munimenta Gildhallae Londoniensis; Liber Albus, Liber Custumarum, et Liber Horn, in archivis Gildhallae asservati.* Vol. I: The *Liber Albus* compiled in 1419 by John Carpenter, Common Clerk of the City of London, gives an account of the social condition, usages and institutions of the city from the 12th to the beginning of the 15th cent. Vol. II (in two parts): 1. Extracts from the *Liber Custumarum*, which was composed, probably by different persons, *circ.* 1320, additions being subsequently made. It contains a collection of laws, ordinances etc. with accounts of the institutions of the city of London from the 12th to the beginning of the 14th cent. 2. Extracts from a collection of the same kind as the preceding, according to Riley identical with the *Liber Horn*, compiled (Riley I, 739) 1311. 3. Translations from the *Liber Custumarum*. 4. Glossary of Anglo-Norman, Saxon and Early English words in *Liber Custumarum* and *Liber Horn*. 5. Glossary of Medieval Latin. 6. Glossarial Index of festivals and dates. Vol. III: Translations of Anglo-Norman passages in *Liber Albus*, glossary of Anglo-Norman and Early English words in *Liber Albus*, extracts from *Assisa panis* and *Liber Memorandorum*.
13	Ellis, H.	*Chronica Johannis de Oxenedes.* Embraces (after a short introduction) the period from 872 to 1293, breaking off abruptly in the last year. Written by a monk of the abbey of St. Benet Holme.
14	Wright, T.	*A Collection of Political Poems and Songs relating to English History, from the Accession of Edward III to the Reign of Henry VIII.* 2 vols.
15	Brewer, J. S.	*The 'Opus Tertium,' 'Opus Minus' etc. of Roger Bacon.* The author (born 1214, died 1292–4), a franciscan, was a distinguished student of natural science and denied the possibility of witchcraft. In 1278 Bacon was condemned at a chapter held at Paris by the general of the franciscan order, and passed into a prolonged confinement.
16	Luard, H. R.	*Bartholomaei de Cotton Monachi Norwicensis Historia Anglicana* (449–1298). The first book (*De Regibus Britonum*) is only a transcript of Geoffrey of Monmouth, and is not here reprinted. In the second book (*De Regibus Anglis, Dacis, et Normannis*) the author has closely followed Henry of Huntingdon (No. 74) for

No.	*Editor.*	*Title, etc.*
		the time down to 1066; the part for 1066–1291 is a transcript of an (unprinted) chronicle composed at Norwich [this Norwich chronicle contains the following portions: the portion for 1066–1258 was compiled in the monastery of Norwich from various older chronicles, the principal authorities followed being Roger of Wendover and Matthew Paris; that for 1258–63 is a simple transcript of part of the chronicle of John de Taxster; the third portion (1264–79) is original; the fourth (1279–84) is a transcript of part of the chronicle usually ascribed to Everisden; the fifth (1285–91) is original, written at Norwich]; the part for 1291–98 is an original and contemporaneous production of Bartholomew. The greater part of the third book (*Liber de Archiepiscopis et Episcopis Angliae*) is an abridgment of William of Malmesbury's *De Gestis Pontificum* (No. 52), but it contains also later original additions. Of Bartholomew all that we know is that he was a monk of Norwich, and from the fact that the second book does not contain any date later than 1298 we may deduce that he did not survive that year.
17	Williams ab Ithel, J.	*Brut y Tywysogion or The Chronicle of the Princes.* Welsh text and English translation. Embraces the years 689 (681)–1282 and treats chiefly of Welsh history; the chronicle is here printed in the form which probably originates from the monastery of Strata Florida. The compilation which forms the basis of the earlier part of the chronicle (until 1120 or perhaps until the middle of the twelfth century), is ascribed to Caradoc of Llancarvan who died before 1152, perhaps already 1124. The later portions have been added in part contemporaneously with the events described therein. Other chronicles are extant, which belong to the same group.
18	Hingeston, F. C.	*A Collection of Royal and Historical Letters during the Reign of Henry IV;* 1399–1404.
19	Babington, Churchill.	*The Repressor of over much Blaming of The Clergy. By Reginald Pecock, sometime Bishop of Chichester.* 2 vols. The author was born about the end of the fourteenth century, and is said to have been a Welshman; in 1444 he became bishop of St. Asaph and in 1450 was translated to Chichester. The work is directed against the views of the lollards and furnishes a good account of their opinions. Pecock was himself afterwards condemned of heresy.
20	Williams ab Itel, J.	*Annales Cambriae.* The most ancient portion, consisting of a short catalogue of dates, embraces the time from 444–954 and was written about the middle of the tenth century probably in South Wales; the writer is unknown; it appears that besides using documents of Welsh growth he has availed himself of an Irish chronicle used also by Tigernach and by the compiler of the Annals of Ulster. Later on a series of dates covering the time from the creation to 453 were added, a few additions to and omissions from the most ancient portion above mentioned were made and the

No.	Editor.	Title, etc.
		chronicle was continued from time to time by various unknown writers down to 1286, and in another manuscript down to 1288.
21	Brewer, J. S. (Vols. I–IV) Dimock, J. F. (Vols. V–VII) Warner, G. F. (Vol. VIII)	*The Works of Giraldus Cambrensis.* 8 vols. The author was Gerald du Barry, born *circ.* 1147 (vol. V, p. lvi, note 2) archdeacon in Wales and unsuccessful candidate for the see of St. Davids, was still living in 1221, year of death unknown. He travelled much in Italy, France, Ireland and Wales. Vol. I contains: *De Rebus a se Gestis, Invectionum Libellus, Symbolum Electorum* and smaller pieces; vol. II: *Gemma Ecclesiastica;* vol. III: *De Invectionibus, De Menevensi Ecclesia Dialogus, Vita S. David;* vol. IV: *Speculum Ecclesiae* (relates largely to the condition of monks and monasteries) *Vita Galfridi Archiepiscopi Eboracensis;* vol. V: *Topographia Hibernica* (the results of journeys to Ireland in 1183 and 1185–6; there were several 'editions' issued by the author, the first early in 1188), *Expugnatio Hibernica* (first 'edition' *circ.* 1188–9, a second *circ.* 1209; vol. VI: *Itinerarium Kambriae, Descriptio Kambriae;* vol. VII (partly edited by E. A. Freeman): *Vita S. Remigii* (a history of the bishops of Lincoln from 1067–1200; in the concluding chapters are short notices of Becket and Baldwin of Canterbury, and bishops Henry of Winchester, Bartholomew of Exeter, Roger of Worcester, Hugo of Lincoln), *Vita S. Hugonis* (bishop of Lincoln 1186–1200; *Distinctiones* I and II were written *circ.* 1213–4, *Distinctio* III between 1214 and 1219), appendices containing documents illustrative of the history of the see and bishops of Lincoln; vol. VIII: *Liber de Principis Instructione* (the first book written and published probably about 1192–93, the second and third books, treating chiefly of Henry II, were probably also begun about that time, but the whole as now extant was not published until about 1217), tables of contents to vols. I–IV and VIII.
22	Stevenson, J.	*Letters and Papers illustrative of the Wars of the English in France during the reign of Henry VI.* 2 vols., vol. II in 2 parts.
23	Thorpe, B.	*The Anglo-Saxon Chronicle, according to the several original authorities.* Vol. I: the various texts side by side; vol. II: English translation.—Embraces the time from the earliest history of Britain to 1154. The chronicle has been preserved in several texts which differ widely and do not always cover the same ground. In the composition of the oldest part, to the end of 891 king Aelfred was perhaps concerned. It is not known how far the later parts are based on contemporary records.—[Later and better edition: Earle, J. *Two of the Saxon Chronicles parallel, with supplementary extracts from the others, with introductory notes and a glossarial index.* Oxford, 1865. On the basis of this text: Charles Plummer, *Two of the Saxon Chronicles . . .* (text and glossary; full introduction in a later volume). Oxford, 1892.]
24	Gairdner, J.	*Letters and Papers illustrative of the Reigns of Richard III and Henry VII.* 2 vols.

No.	*Editor.*	*Title, etc.*
25	Luard, H. R.	*Letters of Bishop Grosseteste* (covering the time from 1210 to 1253). Grosseteste was the well-known bishop of Lincoln.
26	Hardy, T. D.	*Descriptive Catalogue of Manuscripts* (those already printed included) *relating to the History of Great Britain and Ireland.* Vol. I (2 pts.): till 1066. Vol. II: 1066–1200. Vol. III: 1200–1327. The MSS are given under the year in which the last event mentioned in them took place, biographies under the death-year of the subject. A short notice of the materials is appended and a statement of the sources whence they are derived; also some account of the literary date and of the author.
27	Shirley, W. W.	*Royal and other Historical Letters illustrative of the Reign of Henry III.* Vol. I: 1216–1235; vol. II: 1236–72.
28	Riley, H. T.	*Chronica Monasterii S. Albani.* I (vols. I and II) *Thomae Walsingham Historia Anglicana.* Vol. I: 1272–1381; vol. II: 1381–1422 (cf. also No. 64, introduction pp. xxi ff., xxxi ff.). II (vol. III) *Willelmi Rishanger Chronica et Annales.* Contains: 1. a chronicle 1259–1306 (the part 1259–72 is probably by Rishanger, who lived under Edward I, and was written not before 1290; the part 1272–1306 is by an unknown author and probably written not before 1327); 2. an account of the circumstances connected with the adjudication of the throne of Scotland to John Balliol, 1291–2 (also ascribed, but without sufficient reason, to Rishanger); 3. a short chronicle of English history from 1292 to 1300, by an unknown author; 4. *Willelmi Rishanger Gesta Edwardi primi* with *Annales Regum Angliae*, probably by the same hand; 5. fragments of three chronicles of English history, 1285–1307. III (vol. IV) *Johannis de Trokelowe et Blaneforde Chronica et Annales.* Contains: 1. chronicle, 1259–96; 2. annals, 1307–23 by John Trokelowe, monk of St. Albans; 3. continuation of the annals by Henry de Blaneforde; 4. chronicle, 1392–1406; 5. an account, written at the beginning of the 15th cent., of the benefactors of St. Albans. IV (vols. V–VII) *Gesta Abbatum Monasterii S. Albani, a Thoma Walsingham, regnante Ricardo II, ejusdem Ecclesiae praecentore, compilata.* Vol. V: 793–1290; vol. VI: 1290–1349; vol. VII: 1349–1411. Mainly compiled by Walsingham, with a continuation. V (vols. VIII and IX): 1. a chronicle of the years 1422–31, by an unknown contemporary author living at St. Albans; 2. *Annales Monasterii S. Albani*, covering the years 1421–40. The annals probably are the work of John Amundesham; there is internal proof that the author was a member of the abbey, but only at a late date in the time treated of. Written probably before 1452. VI (vols. X and XI) *Registra quorundam Abbatum Monasterii S. Albani, qui saeculo XVmo floruere.*

No.	Editor.	Title, etc.
		Vol. X: *Registrum Abbatiae Johannis Whethamstede, Abbatis, Monasterii S. Albani, iterum susceptae, Roberto Blakeney, Capellano quondam adscriptum.* Vol. XI: *Regiстra Johannis Whethamstede, Willelmi Albon, et Willelmi Walingforde, cum Appendice, continente quasdam Epistolas, a Johanne Whethamstede conscriptas.* VII (vol. XII) *Ypodigma Neustriae a Thoma Walsingham conscriptum.* Contains a short history of England to the reign of Henry V (1413–22) and a history of Normandy in early times.
29	Macray, W. D.	*Chronicon Abbatiae Eveshamensis.* The first part (books I and II), written by Prior Dominicus who lived in 1125, relates to the life and miracles of saint Egwin, bishop of Worcester from 693 onwards. It embraces the time from *circ.* 690 to *circ.* 1030. The second part (book III) covers the time from 714 to 1418, the first half of the 13th cent. being treated fully. The narrative down to 1213 is by Thomas de Marleberge (died 1236, as abbot of Evesham); the author of the continuation is unknown. In the appendix, miraculous relations touching St. Odulph and St. Wistan, and a short history of the convent from 1418 to 1539.
30	Mayor, J. E. B.	*Ricardi de Cirencestria Speculum Historiale de Gestis Regum Angliae.* Vol. I: 447–871; vol. II: 872–1066. The author is mentioned as a monk of Westminster (for the first time in 1355); he died in 1400 or 1401.
31	To 11 *Ed. III*: Horwood, A. T.; then: Pike, L. O.	*Year Books of the Reign of Edward I and III* (collections of judicial decisions). There have appeared hitherto 11 vols., relating to the following years: 20–21, 21–22, 30–31, 32–33, 33–35 *Ed. I;* 11–12, 12–13, 13–14, 14, 14–15, 15 *Ed. III.* To be continued.
32	Stevenson, J.	*Narratives of the Expulsion of the English from Normandy* 1449–1450.—*Robertus Blondelli de Reductione Normanniae. Le Recouvrement de Normendie, par Berry, Hérault du Roy. Conferences between the Ambassadors of France and England.*
33	Hart, W. H.	*Historia et Cartularium Monasterii S. Petri Gloucestriae.* 3 vols. The *Historia* contains a history of the monastery from its foundation (681) to the early part of the reign of Richard II, and a calendar of donations. Walter Froucester, twentieth abbot, has been named as the author, but without reason. The second part is the *Cartularium.*
34	Wright, T.	*Alexandri Neckam de Naturis Rerum libri duo; with Neckam's poem, De Laudibus Divinae Sapientiae.* Neckam lived 1157–1217; *de Naturis Rerum* was written in 12th cent.
35	Cockayne, T. O.	*Leechdoms, Wortcunning, and Starcraft of Early England; being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest.* 3 vols.
36	Luard, H. R.	*Annales Monastici.* Vol. I: *Annales de Margan,* 1066 to 1232; *Annales de Theokesberia,* 1066–1263; *Annales de Burton,* 1004–1263. Vol. II: *Annales Monasterii de Wintonia,* 519–1277; *Annales Monasterii de Waverleia* 1–1291. Vol. III: *Annales Priora-*

No.	Editor.	Title, etc.
		tus de Dunstaplia, 1–1297; *Annales Monasterii de Bermundeseia*, 1042–1432. Vol. IV: *Annales Monasterii de Oseneia*, 1016–1347; *Chronicon vulgo dictum Chronicon Thomae Wykes*, 1066–1289; *Annales Prioratus de Wigornia*, 1–1377. Vol. V: *Index and Glossary.* These annals are of importance especially for the times of John, Henry III and Edward I.
37	Dimock, J. F.	*Magna Vita S. Hugonis Episcopi Lincolniensis.* Bishop Hugo was consecrated in 1186; he died in 1200 The author was probably Adam, abbot of Evesham, chaplain and confessor to the bishop.
38	Stubbs, W.	*Chronicles and Memorials of the Reign of Richard I.* Vol. I contains: *Itinerarium Peregrinorum et Gesta Regis Ricardi* (covering the years 1187–99, especially treating of the crusade); *auctore, ut videtur, Ricardo, Canonico Sanctae Trinitatis Londoniensis.* Formerly ascribed to Guido Adduanensis or to Geoffrey Vinsauf. There are strong reasons for believing that one Richard, a canon, was the author. Of him nothing is known, unless he is identical with a prior of St. Trinity mentioned in 1222, *Ricardus de Templo.* The work (consisting of six books) must have been written between 1199 and 1220; perhaps the 1st and 2nd books were published earlier, between 1193 and 1197 (cf. pp. lxvi–lxxi, lxxix). Vol. II contains: *Epistolae Cantuarienses; the Letters of the Prior and Convent of Christ Church, Canterbury*, 1187–99. These letters relate to the struggle of the monks against the attempts of archbishops Baldwin and Hubert of Canterbury to found a body of secular canons.
39	Vols. I–III, Hardy, W. Vols. IV and V, Hardy, W. and Hardy, E.	*Recueil des Chroniques et anchiennes Istories de la Grant Bretaigne, a present nomme Engleterre, par Jehan de Wavrin.* Vol. I: mythological period—689. Vol. II: 1399–1422. Vol. III: 1422–31. Vol. IV: 1431–43. Vol. V: 1442–71. The author was born *circ.* 1394, and died probably soon after 1471. He was a knight and took part under the duke of Burgundy in the struggles between France and England. On the division and contents of the complete work (which also covers the years 689–1399) and on the time of the composition of its several parts (1445–74) see vol. I pp. xlviii ff.
40	Hardy, W. and Hardy, E.	Translation of No. 39 (down to year 1431 has appeared).
41	Vols. I and II, Babington, Churchill. Vols. III to IX, Lumby, J. R.	*Polychronicon Ranulphi Higden, with Trevisa's translation.* 9 vols. From the creation to 1352 by Higden, a monk of St. Werburg's in Chester, whose death probably occurred on the 12th of March, 1364; continuations by other hands (in vol. IX that of John Malverne). An universal history, much used in the 14th and 15th cents.
42	Glover, J.	*Le Livere de Reis de Brittanie e Le Livere de Reis de Engletere.* The former is an abridgment of English history (for the most part borrowed from William of Malmesbury or Geoffrey of Monmouth) from the fabulous Brutus to Knut, with a short enumeration of the later kings down to Edward I. The latter is a chronicle covering the time from the earliest history of Britain

No.	Editor.	Title, etc.
		to 1274, almost entirely taken from known sources. The volume also contains the Wroxham continuation (1274–1306) and the Sempringham continuation (1280–1326). Dates and histories of the several writers not certainly known.
43	Bond, E. A.	*Chronica Monasterii de Melsa* (the Cistercian abbey of Meaux), 1150 (foundation)–1396; written about 1394–1400 ff. by Thomas de Burton (abbot, 1396; resigned, 1399; died, 1437) with a continuation down to 1406, written by an unknown monk of the abbey who lived under abbot John of Hoton (died, 1445). An appendix covers the years 1406–17. The chronicle gives a history of the abbey and some general history. Text formed from two MSS, both author's autographs, which differ considerably from one another (cf. vol. I, p. xlvi f.). 3 vols.
44	Madden, F.	*Matthaei Parisiensis Historia Anglorum, sive, ut vulgo dicitur, Historia Minor.* 3 vols. 1067–1253. An abridgement of the *Chronica Majora* (cf. below, No. 57) made under the author's supervision or, partly, by himself, the abridgment being from the second edition, which was continued to 1253. The passages which affect the king are softened down. Matthew, a monk of St. Albans from 1217 onwards, called Parisiensis perhaps from a sojourn in France, died in 1259.
45	Edwards, E.	*Liber Monasterii de Hyda:* a Chronicle and Chartulary of Hyde Abbey, Winchester, 455–1023. Contains, after a short introduction, a history of the kings from Alfred to Knut [use has been made of Higden (No. 41) and earlier writers], also, a large number of documents from Anglo-Saxon times. As appendices are given a *Chronicon Monasterii de Hida*, a grant from king Edward, and *Privilegium Regis Cnutonis de Draytone;* also, translations of the Anglo-Saxon documents contained in *Liber de Hyda.*
46	Hennessy, W. A.	*Chronicon Scotorum, A Chronicle of Irish Affairs from the earliest times to* 1135; *with Supplement, containing the events from* 1141 *to* 1150. With translation. The parts which relate to earlier affairs are not trustworthy.
47	Wright, T.	*The Chronicle of Pierre de Langtoft, in French verse, from the earliest Period to* 1307. 2 vols. The author is stated to have been canon of Bridlington in Yorkshire (cf. also No. 61, p. 101); he lived in the reign of Edward I, and on into that of Edward II. The chronicle falls into three parts. The first is an abridgment of Geoffrey of Monmouth's *Historia Britonum;* the second (684–1272) is a compilation from different writers; the third is a contemporary and independent record of the reign of Edward I.
48	Todd, J. H.	*Cogadh Gaedhel re Gallaibh,* or *Wars of the Gaidhil* (*i.e.* the Irish) *with the Gaill* (*i.e.* the foreigners). Irish text with English translation. Embraces the years from about 795 to 1014, giving an account of the invasions of Ireland by the Danes and other Norsemen. Portions of the work are extant in two MSS, of about the beginning of the twelfth and about the middle of the fourteenth centuries respectively. The only known

No.	*Editor.*	*Title, etc.*
		copy of the whole work is a transcript made in 1635, apparently not without some deviations from the original. The work was probably written at the beginning of the eleventh century; the author is unknown.
49	Stubbs, W.	*Gesta Regis Henrici Secundi Benedicti Abbatis, the Chronicle of the Reigns of Henry II and Richard I, 1169–1192, commonly known under the name of Benedict of Peterborough.* 2 vols. According to Stubbs the following parts are to be distinguished: 1. 1169–77, begun about 1171, worked back to 1169 and continued contemporaneously with the events recorded; 2. 1177–80, few signs that the work is contemporaneous, but none of later composition; 3. 1180–8, probably contemporaneous, but foreign episodes introduced afterwards; 4. 1188–92, evidently contemporaneous; brought to an abrupt conclusion. 'Whether these divisions represent different issues, different editions, the work of different authors, or of the same author under different circumstances,' cannot be decided. Of the history of the author, if one person, nothing is known; he was probably connected with the court. A possibility is suggested by Stubbs that he is to be identified with Richard Fitz-Neal (bishop of London, 1189; died 1198), writer of the *Dialogus de Scaccario*. Against this view see Liebermann, Introduction to *Dialogus*, Göttingen, 1875, pp. 66 ff. For the use of the chronicle by Hoveden see Stubbs, I pp. xxvi, xliii and liv; also Introduction to No. 51, vol. I pp. li ff.
50	Anstey, H.	*Munimenta Academica or Documents Illustrative of Academical Life and Studies at Oxford.* In two parts.
51	Stubbs, W.	*Chronica Magistri Rogeri de Hovedene.* 4 vols. The first part, relating to the years 732–1148, is based on the Durham *Historia post Bedam* etc. (a compilation made between 1148 and 1161, and itself resoluble into the *History of Simeon of Durham* and the *History of Henry of Huntingdon*), to which Hoveden added but little. The second part, 1148–69, cannot be referred as a whole to any previously existing authority; yet the probability is strong that Hoveden's share is confined to a few occasional memoranda. He certainly used the *Chronicle of Melrose* and some of the *Lives* and letters of Becket. In the third part, Christmas 1169 to 1192, Hoveden is re-editing Benedict's chronicle (cf. No. 49). The fourth part, 1192–1201, is original. The author, probably originally a royal official, afterwards parish priest of Hoveden, lived at the end of the 12th cent. Dates of birth and death not known; but he died before 1207. (Cf. also No. 58, vol. II, pp. lxxxix ff., No. 61, p. xxxiii f.)
52	Hamilton, N. E. S. A.	*Willelmi Malmesbiriensis Monachi de Gestis Pontificum Anglorum Libri Quinque.* The author was probably born *circ.* 1095. The work was first written in 1125, shortly after the *Gesta Regum* (cf. below, No. 90), but revised at a later time (1140) by the author. Book I contains the history of the archbishopric of Canterbury and of the bishoprics of Rochester; book

No.	Editor.	Title, etc.
		II, of the bishops of London, East Anglia, Winchester, Sherborne, Ramsbury, Wells, Crediton, Chichester and of several religious houses; book III, the history of the archbishopric of York and of the bishopric of Durham (Lindisfarne); book IV, the history of the bishoprics of Worcester, Hereford, Lichfield, Lincoln (Dorchester), Ely, and several monasteries; book V is a life of saint Aldhelm.
53	Gilbert, J. T.	*Historic and Municipal Documents of Ireland, from the Archives of the City of Dublin etc.* 1172–1320.
54	Hennessy, W. M.	*The Annals of Loch Cé. A Chronicle of Irish Affairs, from* 1041 *to* 1590. 2 vols. With translation.
55	Twiss, T.	*Monumenta Juridica. The Black Book of the Admiralty, with Appendices.* 4 vols. Contains old rules and orders about admiralty matters; also sea-laws and customs for various places.
56	Williams, G.	*Memorials of the Reign of Henry VI.—Official Correspondence of Thomas Bekynton, Secretary to Henry VI, and Bishop of Bath and Wells.*
57	Luard, H. R.	*Matthaei Parisiensis, Monachi Sancti Albani, Chronica Majora.* Vol. I: 1–1066; vol. II: 1067–1216; vol. III: 1216–1239; vol. IV: 1240–1247; vol. V: 1248–1259; vol. VI: *Additamenta;* vol. VII: *Index.* (Cf. above, No. 44.) For the time up to the middle of the year 1235 it is a new edition of earlier compilations; especially to the end of 1188, of a compilation which probably (vol. II p. x and vol. VII p. ix; on the other hand see Hewlett in No. 84, vol. III p. xi f.) is to be assigned to John de Cella, abbot of St. Albans, 1195–1214; from 1189–1235 it is drawn from Roger de Wendover (No. 84). The rest is all by Matthew of Paris himself. At first he ended his work with the year 1250; afterwards he added the history to 1253; lastly, a continuation to 1259. He died in 1259. Vol. VI contains documents derived from the Cotton MS written at St. Albans under Matthew's own direction and with corrections in his hand. He often refers to this *Liber Additamentorum.*
58	Stubbs, W.	*Memoriale Fratris Walteri de Coventria, The Historical Collections of Walter of Coventry.* 2 vols. Of the author nothing is known; the book was composed between 1293 and 1307. It covers the time from the first kings of Britain to 1226. The period down to 1002 is treated very briefly. (For the sources of this part of the work see vol. I, pp. xxx ff.) From 1002–1225 the *Memoriale* is based on an intermediate compilation preserved in MS. [In this intermediate compilation, the part for 1002 to 1131 goes back to Florence of Worcester and Marianus Scotus; 1131–54, to Henry of Huntingdon (No. 74); 1170–1177, to Benedict (No. 49); 1181–1201, to Hoveden (No. 51); 1155–69, 1177–80 and 1201–1228 to a chronicle of the monastery of Barnwell, now represented by an unprinted MS in the College of Arms, which for the years 1201–1225 is a good, contemporaneous and, so far as is known, original record.]
59	Wright, T.	*The Anglo-Latin Satirical Poets and Epigrammatists of the Twelfth Century.* 2 vols.
60	Campbell, W.	*Materials for a History of the Reign of Henry VII,*

No.	*Editor.*	*Title, etc.*
		from original Documents preserved in the Public Record Office. 2 vols.
61	Raine, J.	*Historical Papers and Letters from the Northern Registers.* From the years 1265–1415; mainly taken from diocesan registers; they relate both to ecclesiastical and to temporal matters, especially to occurrences in the northern border-districts of England.
62	Hardy, T. D.	*Registrum Palatinum Dunelmense. The Register of Richard de Kellawe, Lord Palatine and Bishop of Durham;* 1311–1316. 4 vols. This is the oldest register of the county palatine of Durham; it relates to both temporal and ecclesiastical affairs.
63	Stubbs, W.	*Memorials of Saint Dunstan, Archbishop of Canterbury.* Vol. I contains: 1. biography of St. Dunstan (died 988) by an author with the initial B; written *circ.* 1000; 2. letter of the monk Adelard of Blandinium to archbishop Elfege touching the life of St. Dunstan, written between 1006 and 1011; 3. *Life* by Osbern, precentor of Canterbury, written between 1070 and 1093; 4. *Life* by Eadmer (cf. No. 81), probably written before 1109; 5. *Life* by William of Malmesbury, after *Gesta Regum* (No. 90), written, therefore, after 1120; 6. *Life* by John Capgrave (No. 1); 7. *Reliquiae Dunstanianae;* 8. *Fragmenta Ritualia de Dunstano.*
64	Thompson, E. M.	*Chronicon Angliae*, 1328–88, *Auctore Monacho quodam Sancti Albani.* A contemporaneous or almost contemporaneous record; author and date of composition unknown; perhaps to be assigned in part to Thomas Walsingham (No. 28, I). Cf. p. xxxiv.
65	Magnússon, Eiríkr.	*Thómas Saga Erkbyskups. A Life of Archbishop Thomas Becket, in Icelandic.* 2 vols. With English translation. Taken from the life of Becket by Benedict of Peterborough; contains apparently the missing parts of Benedict's biography.
66	Stevenson, J.	*Radulphi de Coggeshall Chronicon Anglicanum.* Contains: 1. The *Chronicon Anglicanum* of Ralph, abbot (1207 to 1218) of Coggeshall. Date of death not known. The chronicle covers the years 1066-1224; 2. *Libellus de Expugnatione Terrae Sanctae per Saladinum*, usually ascribed to the same writer, but author unknown; 3. *Magistri Thomae Agnelli Wellensis Archidiaconi, Sermo de Morte et Sepultura Henrici Regis Junioris* (son of Henry II, died 1183); 4. Legend of *Fulco Witz-Warin*; 5. Extract from Gervasius Tileburiensis, *Otia Imperialia* (the author was in the service of Henry the lion; the work is dedicated to Otto IV, emperor of Germany).
67	Vols. I–VI, Robertson, J. C. Vol. VII, Sheppard, J. B.	*Materials for the History of Thomas Becket, Archbishop of Canterbury.* Vols. I–VII. (Cf. No. 65.) Vol. I: *Vita et Passio S. Thomae* and *Miracula gloriosi martyris Thomae*, both by William, a monk of Canterbury. (With regard to the *Miracula*, the author was at work in 1172; according to Robertson the *Vita* was probably written after the *Miracula*.) Vol. II: *Passio S. Thomae* and *Miracula S. Thomae*, both by Benedict, a monk of Canterbury, who later on (from 1177; cf. No. 49) was abbot of Peterborough. (The *Passio*, which only treats of the last day of Becket, was written earlier

No.	Editor.	Title, etc.
		than the *Miracula*, the *Miracula* of Benedict probably earlier than those of William); Other Reports of Miracles; *Vita S. Thomae* by John of Salisbury (distinguished scholar, partisan of Becket) with introduction and additions by Alan (monk of Canterbury from 1174, afterwards abbot of Tewkesbury, died 1202; the trustworthiness of his additions is doubtful; written as preface to his collection of letters and documents relating to Becket); *Vita S. Thomae* by Edward Grim (probably one of the secular clergy, he was wounded shortly after his arrival at Canterbury in trying to protect Becket against his murderers). Vol. III: *Vita S. Thomae* by William Fitzstephen (according to his own assertion, which is quite credible, he was a chaplain of Becket and present at the council of Northampton and at Becket's death; his name is not mentioned by the other writers, perhaps, because he also had some connexion with the royal court); *Vita S. Thomae* by Herbert of Boseham and Extracts from the *Liber Melorum* of the same author (Herbert was a staunch partisan of Becket and his constant companion; he wrote the *Vita* in 1184 and the following years, after this the *Liber Melorum*, which contains a few particulars of the time subsequent to Becket's death). Vol. IV: *Vita S. Thomae*, perhaps by Roger, a monk of Pontigny and contemporary of Becket; *Vita S. Thomae* by an anonymous author (designated as '*Anonymus Lambethensis*' because the MS is preserved at Lambeth; written between 1172 and 1174, the *Vita* by John of Salisbury being much used); short treatises and extracts from chronicles; *Quadrilogus* (life of Becket, written 1198–99 by E[lias?] of Evesham, a compilation from the works of William, Benedict, John, Alan and Herbert; this is the so-called 'second *Quadrilogus*'; the so-called 'first *Quadrilogus*' is of later date and has not been here reprinted). Vol. V–VII: Letters.
68	Stubbs, W.	*Radulfi de Diceto Decani Lundoniensis Opera Historica.* 2 vols., containing: 1. *Abbreviationes Chronicorum* (extracts from older writings) relating to the time from the creation to 1148; 2. *Ymagines Historiarum*, a chronicle covering the years 1148–1202 (it is not certain whether the history of the three last years is to be ascribed to Ralph de Diceto or not); 3. Minor works of R. de Diceto. The author, probably born *circ.* 1120–30, was archdeacon of Middlesex, 1152. As such he was during Becket's struggles subordinate to Becket's greatest enemy, Foliot, bishop of London. In 1180 Ralph became dean of St. Paul's. The date of his death, not precisely known, was perhaps 1202.
69	Graves, J.	*Roll of the Proceedings of the King's Council in Ireland, for a Portion of* 16 *Ric. I*, 1392/3.
70	Twiss, T.	*Henrici de Bracton de Legibus et Consuetudinibus Angliae Libri Quinque in varios Tractatus distincti.* 6 vols. On the work see under 2 (law-books).
71	Raine, J.	*The Historians of the Church of York, and its Archbishops.* 3 vols. Vol. I contains: 1. *Vita Wilfridi* by Eddius Stephanus (written about 710); 2.

No.	Editor.	Title, etc.
		Vita St. Wilfridi by Fridegodus; 3. *Vita Wilfridi* by Eadmer; 4. *Breviloquium Vitae St. Wilfridi* (by Eadmer?); 5. Appendix: *Vita S. Wilfridi* by an unknown author; *Vita et Miracula St. Wilfridi* (the collection in which it has been handed down is ascribed to John of Tynemouth); 6. *Vita St. Johannis, Episcopi Eboracensis* by Folcardus; 7. *Miracula St. Johannis*; 8. Several other miraculous histories; 9. Appendix: five minor biographies of St. John; 10. Alcuin, *De Pontificibus et Sanctis Ecclesiae Eboracensis* (a poem); 11. *Vita Oswaldi* (died 992) *Archiepiscopi Eboracensis* (contemporaneous, probably written between 995 and 1005).—Vol. II. contains: 12. *Vita St. Oswaldi* by Eadmer (in two parts: biography and miracles. Based on the already mentioned biography and materials of Ramsey); 13. *Vita St. Oswaldi* by Senatus (the author became prior in 1189 and resigned in 1196. Mainly derived from Eadmer's biography); 14. *Vita St. Oswaldi* by an unknown author (almost entirely a compilation); 15. *Vita St. Oswaldi* (the collection in which it has been handed down is ascribed to John of Tynemouth); 16. Hugo Sottovagina, history of the four archbishops (Thomas I to Thurstan) of York (the author was precentor and archdeacon of York; the work was, as to the main portion, written before 1128; the history is carried on until 1127, and, by additions, to 1153); 17. Letter of archbishop Ralph of Canterbury to Calixtus II, 1119, after the consecration of Thurstan (relates to the claim of the archbishops of Canterbury to supremacy over the church of York); 18. Letter of Simeon of Durham to Hugo, dean of York (1130–32); *Vita Thurstini Archiepiscopi*, by an unknown author; 20. *Vita St. Willelmi*, by an unknown author; 21. *Miracula St. Willelmi;* 22. *Lectiones in Festo Translationis St. Willelmi;* 23. *Miscellanea*, relating to archbishop Scrope; 24. *Chronica Pontificum Ecclesiae Eboracensis*, 3 pts. (the second part perhaps by Thomas Stubbs, a dominican); 25. *Chronicae Metricae duae;* 26. *Chronica de Archiepiscopis Eboracensibus.*—Vol. III contains letters and other documents (from 930 to the reformation) connected with the history of the northern bishoprics.
72	Brewer, J. S. and Martin, C. T.	*Registrum Malmesburiense. The Register of Malmesbury Abbey; Preserved in the Public Record Office.* 2 vols.
73	Stubbs, W.	*Historical Works of Gervase of Canterbury.* 2 vols. Gervasius became a monk in 1163; he probably lived from 1141 to 1210. Vol. I contains the larger chronicle of Gervase, in which the reigns treated at length are those of Stephen, Henry II and Richard I. Some minor treatises precede. Vol. II contains: 1. Gervase's shorter chronicle (*Gesta Regum*), beginning with Aeneas; down to 1200 or 1210 written by Gervase; from that time to 1328 continued by different contemporary writers; 2. *Actus Pontificum Cantuariensis Ecclesiae* (597-1207); 3. *Mappa Mundi*, contains, in particular, list of the monasteries in England and the episcopal sees of all countries.

No.	Editor.	Title, etc.
74	Arnold, T.	*Henrici Archidiaconi Huntendunensis Historia Anglorum.* In eight books, covering the years 55–1154. Written in several editions, issued from 1130 to 1154.
75	Arnold, T.	*The Historical Works of Symeon of Durham.* 2 vols. The author became a monk *circ.* 1083; between 1104 and 1109 he wrote the *Historia Dunelmensis Ecclesiae*, carried to 1096, many years later his general history *Historia Regum*; he died probably about 1130. Vol. I contains: *Historia Dunelmensis*, with continuations to 1154. Also the following, by various authors: *De Injusta Vexatione Willelmi Episcopi primi; Historia de St. Cuthberto; De Obsessione Dunelmi*, an Anglo-Saxon poem; *Epistola de Archiepiscopis Eboraci; Capitula de Miraculis et Translationibus; Carmen Aethelwulfi; Vita Bartholomaei Anachoretae; Vita St. Oswaldi Regis.* Vol. II contains: Simeon's *Historia Regum* (the first part gives a history of the years 731–957, the second goes back to 848 and covers, much use being made [down to 1118] of Florence of Worcester, the time to 1129); John of Hexham's continuation embracing the years 1130–53; also the following minor treatises: second part of *Capitula de Miraculis et Translationibus*, *De Primo Saxonum Adventu*, *Carmen de Morte Sumerledi*, *Series Regum Northymbrensium.*
76	Stubbs, W.	*Chronicles of the Reigns of Edward I and Edward II.* 2 vols. Vol. I contains: *Annales Londonienses.* From 1194 (begins in the middle of a sentence) to 1316, with some further notices from the years 1317, 1329, 1330. A lacuna between 1293 and 1301. Down to 1289 based largely on the *Flores Historiarum* (No. 95), afterwards original. When the *Annales* were written or by whom is not known; Stubbs supposes (vol. I pp. xxiii. ff.) that Andreas Horn (died 1328) may perhaps have composed the part to 1316. 2. *Annales Paulini*, 1307–41; the author is not known, he had some connexion with St. Paul's, London; the part from 1332 onwards is almost identical with the chronicle of Murimuth (No. 93). Vol. II contains: 1. *Commendatio Lamentabilis in Transitu Magni Regis Edwardi.* A lament on the death of Edward I. The author is John of London, of whose history nothing certain is known; written soon after the death of Edward I (1307). 2. *Gesta Edwardi de Carnarvon* and *Gesta Edwardi III*, 1307–39, with brief notes down to 1377. Both parts were composed in a house of regular canons at Bridlington, contemporaneously and, down to 1339, perhaps by the same person; in the present form of the work the second part and at least the close of the first have been revised, not before 1361, probably after 1377. 3. *Monachi cujusdam Malmesburiensis Vita Edwardi II*, 1307–25, with additions, taken from Higden (No. 41), down to 1348. According to Stubbs, the author was not (as Hearne supposed) a monk, but probably some university teacher or learned lawyer; the connexion with Malmesbury is doubtful. It is uncertain when the work was written—Stubbs surmises towards the end of the reign of Edward II. 4. *Vita et Mors Ed-*

No.	Editor.	Title, etc.
		wardi Secundi Regis Angliae, '*conscripta a Thoma de la Moore*,' 1307–1327. Not by Thomas de la Moore, but an extract, with trifling changes, from the shorter chronicle [he wrote also a longer chronicle] of Geoffrey le Baker of Swinbrook, Oxfordshire (edited by Giles, 1847), written in 1347. Baker states that he used a French biography by Thomas de la Moore; this French original is not known. Thomas de la Moore accompanied (1327) one of the bishops who induced the king to abdicate. [In the appendix to the Introduction to vol. II is an extract from the chronicle of the monastery of Barling; on this chronicle cf. Introduction, pp. xxxix ff.]
77	Martin, C. T.	*Registrum Epistolarum Fratris Johannis Peckham* (archbishop of Canterbury, 1279–92). 3 vols.
78	Jones, W. H. R.	*Register of S. Osmund* (bishop of Salisbury, 1078–99). Cf. No. 97.
79	Hart, W. H. and Lyons, P. A.	*Chartulary of the Abbey of Ramsey.* 2 vols. The 3rd vol. is in preparation. (Cf. also No. 83.)
80	Gilbert, J. T.	*Chartularies of St. Mary's Abbey, Dublin, with the Register of its House at Dunbrody, County of Wexford, and Annals of Ireland*, 1162–1370.
81	Rule, M.	*Eadmeri Historia Novorum in Anglia, et opuscula duo de Vita Sancti Anselmi et Quibusdam Miraculis ejus.* The several books of the *Historia Novorum* were probably completed by degrees, what are now the four first (originally, three) probably in or shortly before 1112. The author kept making changes in his original text down to his death (according to Hardy, No. 26, II, 147, *circ.* 1124; according to Haddan and Stubbs, *Counc.* II, 209, on 13th Jan., 1124; whilst Rule, pp. lv–lix, gives *circ.* 1144). The chronicle, after a short introduction beginning with the year 960, covers the time from 1066–1122. (Cf. also Ragey, *Eadmer*, Paris and Lyon, 1892; but he rates the trustworthiness of *Eadmer* too highly.)
82	Howlett, R.	*Chronicles of the Reigns of Stephen, Henry II and Richard I.* 4 vols. Vol. I contains: William of Newburgh, *Historia Rerum Anglicarum* (covers the years 1066–1198; written probably 1196–8; on the authorities used see Introduction to vol. I), books I–IV; vol. II: book V of that work; the continuation down to 1298; and *Draco Normannicus* by Etienne de Rouen; vol. III: *Gesta Stephani Regis* (covers the years 1135–47); the chronicle of Richard of Hexham; the *Relatio de Standardo* of St. Aelred de Rievaulx; the poem of Jordan Fantosme; and the chronicle of Richard of Devizes; vol. IV: chronicle of Robert de Torigni [=de Monte] (consists of additions to the chronicle of Sigebert de Gemblours from 94–1100, and of an original chronicle for the years 1100–86; written by degrees, 1150–86); and *Continuatio Beccensis* (relating to the years 1157–61).
83	Macray, W. D.	*Liber benefactorum ecclesiae Ramesiensis.* Probably written *circ.* 1160–70 by an inmate of the Ramsey monastery; of the author's history nothing is known. The work covers the time from the beginning of the 10th century to 1167 (later additions made); it con-

No.	Editor.	Title, etc.
		tains a history of the founding of Ramsey, a biography of St. Oswald and a biography (covering the years 1135–60) of abbot Walter, the rest of the volume being made up chiefly of extracts from and copies of documents serviceable for a history of the monastery. In the appendix similar documents down to 1471.
84	Hewlett, H. G.	*Chronica Rogeri de Wendover, sive Flores Historiarum.* 3 vols. The chronicle of Wendover covers the time from the creation to 1235. This edition is only of the part from 1154 to 1235. For the earlier period and probably down to the end of 1188 Wendover used nothing but an earlier compilation (cf. No. 57). He was (1224–31) deprived of his office as prior of Belvoir, and from then to his death (1236) was historiographer in the abbey of St. Albans.
85	Sheppard, J. B.	*The Letter Books of the Monastery of Christ Church, Canterbury.* The letters are from the years 1296–1333.
86	Wright, W. A.	*The Metrical Chronicle of Robert of Gloucester.* The chronicle (from the earliest time down to 1270) has been preserved in two forms. The second contains down to 1135 interpolations wanting in the first, then, after 1135, a shorter text totally different from that of the first. The variations of the second form are printed in the appendices. The chronicle is in Gloucestershire dialect; the author of the first form calls himself Robert, and probably wrote *circ.* 1300; nothing else is known of him. For the time down to 1135 an earlier work perhaps served as a basis; for that from 1256 onwards the chronicle is an independent authority.
87	Furnivall, F. J.	*Chronicle of Robert Manning of Brunne*, 1338. 2 vols. Manning's English rhyming chronicle covers the time from the creation. Printed here is only the first part of the chronicle (down to king Cadwalader, end of 7th cent.). This part is almost entirely a translation from the French of Wace. The second part (edited by Hearne, 1725; reprinted 1800) is a translation from the French of Peter of Langtoft (No. 47). Manning, born in Brunne (Bourne), was a member of the Gilbertine order, and resided at Sempringham and other neighbouring establishments of the order; he lived under Edward I. Edward II and Edward III.
88	Vigfusson, G.	*Icelandic Sagas and other Historical Documents relating to the Settlements and Descents of the Northmen on the British Isles.* Vol. I: *Orkneyinga Saga, and Magnus Saga.* Vol. II: *Hakonar Saga, and Magnus Saga.* Vols. III and IV (edited by Dasent) are in preparation.
89	Stokes, W.	*The Tripartite Life of St. Patrick, with other documents relating to that Saint.*
90	Stubbs, W.	*Willelmi Monachi Malmesbiriensis de Regum Gestis Anglorum, libri V; et Historiae Novellae, libri III.* William of Malmesbury was probably born *circ.* 1095. The *Regum Gesta* were written shortly before the *Gesta Pontificum* (1125; cf. No. 52); the author, by *circ.* 1135 or 1140, had made at least two further revisions. The *Historiae Novellae* relate to the time from 1125–1142, and were written 1140–1142.

No.	*Editor.*	*Title, etc.*
91	Hardy, T. D., continued by Martin, C. T.	*Lestorie des Engles by Geffrey Gaimar*, with translation. 2 vols. Covers the time from the struggles of the Anglo-Saxons against the Britons to 1100. Of the author nothing certain is known. He wrote before 1147, probably after 1135.
92	Lumby, J. R.	*Chronicle of Henry Knighton, Canon of Leicester.* The volume which has appeared covers the time from kings Eadwi (from 955) and Eadgar (959–75) to 1335. (For the rest of the chronicle see, for the present, Twysden's edition.) The chronicle comes down to 1395. Continuation of this edition is preparing.
93	Thompson, E. M.	*Adae Murimuth, Continuatio Chronicarum*, and *Robertus de Avesbury, De Gestis Mirabilibus Regis Edwardi III.* Adam Murimuth lived 1274(5)–1347; he was at last canon in London and rector (cf. No. 76, vol. I, pp. lx ff.; vol. II, p. cix, note 1); his chronicle embraces the years 1303–47; in its present form it was begun after 1325 and appeared probably in at least three successive editions, the first going down to 1337, the second to 1341, the third to the death of the author. Robert of Avesbury was registrar of the archiepiscopal court at Canterbury; particulars of his life are not known; his chronicle, after a short introduction, covers the years 1325–56 and treats especially of external history.
94	Gilbert, J. T.	*Chartulary of the Abbey of St. Thomas the Martyr, Dublin.*
95	Luard, H. R.	*Flores Historiarum.* Vol. I: from creation to 1066; vol. II: 1067–1264; vol. III: 1265–1326. This chronicle was written down to 1265 at St. Albans, then removed to Westminster and continued there. To 1250 it is mainly taken from the *Chronica Majora* of Matthaeus Parisiensis (No. 57). To 1259 it is based on the works (Nos. 44 and 57) of Mat. Paris. and other authorities for the most part still extant; for the later time made up of notes of a large series of apparently contemporaneous writers. The chronicle was long ascribed to Matthew of Westminster; but probably no such person ever existed and the name is due to a misunderstanding.
96	Arnold, T.	*Memorials of St. Edmund's Abbey.* 2 vols. have appeared; a third is in preparation. Vol. I contains: Abbo de Fleury, *Passio St. Eadmundi* (written towards end of 10th cent.); Hermannus archidiaconus, *De Miraculis St. Eadmundi* (covers the years 870–1095); Gaufridus de Fontibus, *De Infantia St. Eadmundi* (dedicated to the abbot Ording, 1148–56); abbot Samson, *De Miraculis St. Eadmundi* (introduction written before 1180); Jocelin de Brakelonde, *Chronica* (contemporaneous, covers the years 1173–1203); *appendices.* Vol. II contains: *Annales S. Edmundi* (author unknown; covers years 1–1212; only in part printed); *Electio Hugonis Abbatis* (1211–15); *Epist. Roberti Abbatis de Thorneye;* Denis Piramus, *La Vie St. Edmund* (written approximately about 1240); *Electio Symonis* as abbot (1257); *Processus contra Fratres Minores, qualiter expulsi erant de villa St. Edmundi* (1256–63); *Gesta Sacristarum* (1065 to end of 13th

No.	Editor.	Title, etc.
		cent.); *Electio Thomae* as abbot (1301-2); *Depraedatio Abbatiae* (1326–31); *appendices.*
97	Jones, W. H. R. and Macray, W. D.	*Charters and Documents, illustrating the History of the Cathedral and City of Sarum, 1100–1300; forming an Appendix to the Register of S. Osmund.* Cf. No. 78.
98	Maitland, F. W.	*Records of the Parliament holden at Westminster on Feb. 28th, 1305.*
		In preparation are:—
	Twiss, T.	*Ranulf de Glanvill, Tractatus de legibus et consuetudinibus Angliae.*
	Hall, H.	*The Red Book of the Exchequer.*

(*d*) The most important of the chronicles which have not as yet appeared in the preceding collection, but are occasionally cited in this book are here given, with the best editions:—

Asser. *De Rebus Gestis Aelfredi* in *Monumenta Historica Britannica*, vol. I. 1848 edited by Petrie, Sharpe, Hardy. Covers the years 849–893; down to 887 it is in great part a translation of the Anglo-Saxon chronicle. Asser died in 908 or 910.

Beda. *Historia Ecclesiastica Gentis Anglorum.* Quoted from the edition of Stevenson for the English historical society, London, 1841. Also printed in *Monumenta Historica Britannica.* Beda died about 734; his work covers from the earliest period of British history to 731. Authorities are specified in the introductory letter to king Ceolwolf.—*The old English version of Bede's Ecclesiastical History of the English People, edited with a translation and introduction by Thomas Miller.* (Publications of the Early English Text Society.) London, 1890.—Beda, minor historical works (*Vita St. Cuthberti*, etc.), edited by Stevenson for the English historical society. London, 1841.

Florentius Wigorniensis. *Chronicon.* The author, Florence of Worcester, was a monk of Durham who died in 1118. The work covers the time from 450 to 1117. Various hands have carried on the chronicle to 1141 and then to 1297. The basis is the chronicle of Marianus Scotus, so far as that extends. Florence made additions, mostly borrowed from Beda, Asser, the Anglo-Saxon chronicle or the lives of the English saints. The additions of Florence to the chronicle of Marianus down to the year 1000 and the chronicle of Florence, including the parts borrowed from Marianus, for the years 1000–66, are printed in *Monumenta Britannica.* The additions of Florence to the chronicle of Marianus and the continuations of Florence and others to 1297 were edited by Thorpe for the English historical society. 2 vols. 1848–49.—Marianus Scotus, born *circ.* 1028, died *circ.* 1082, was an Irishman, who spent the chief part of his life in Köln, Fulda and Mainz. His chronicle is printed in *Monumenta Germaniae Historica, Scriptores* V, 481 ff.

Galfredus Monumetensis. *Historia Britonum*, ed. Giles. London, 1844. Geoffrey of Monmouth became bishop of St. Asaph in 1152. The work assumed its present form in 1147; but was extant in some earlier form in 1139. "It does not appear that Geoffrey was acquainted with a single historical fact relative to transactions subsequent to Julius Caesar, which he did not derive from Gildas, Beda or Nennius; it is probable that Eutropius and Orosius were consulted; and possibly Suetonius may have been known to him." The whole as it stands is not, what it professes to be, a translation of a narrative written in the British tongue. Hardy in *Rer. Brit. Scr.* No. 23, I, 341 ff.; Tedder in *Dict. of Nat. Biography* s.v. Geoffrey; Zimmer, *Nennius Vindicatus*, p. 277.

Gildas. *Liber querulus de excidio Britanniae.* Printed in *Monumenta His-*

torica Britannica. Another edition by Stevenson for the English historical society, 1838; after the latter a German edition by San-Marte (A. Schulz), Berlin, 1844. Gildas lived from *circ.* 516 to *circ.* 570. He wrote this book about 560, going back therein to the conquest of Britain by the Romans. See more in Stevenson's introduction, in Haddan and Stubbs, *Counc.* I, 44, note †, and in Hardy, *Rer. Brit. Scr.* No. 26, I, 132 ff.

Ingulphus, abbot of Croyland. *Chronicle.* Latest edition by Walter de Gray Birch, Wisbech, 1885. Previously last by Fulman, Oxford, 1684. Ingulphus was secretary of William the conqueror; but the monastic history ascribed to him belongs, according to Palgrave, *Essay on the sources of Anglo-Saxon history, Quarterly Review*, 1826, vol. 34, No. 67, pp. 289–98 (quoted in Schmid, *Gesetze der Angelsachsen*, Introduct. p. 59), at earliest to the end of the 12th or beginning of the 13th cent.; it contains spurious documents. On the credibility of the chronicle see Riley in the preface to his translation in Bohn's historical library, 1854; Henry Scale English. *A light on the historians and on the history of Crowland Abbey*, London, 1868; Liebermann in *Neues Archiv der Gesellsch. f. deutsche Geschichtskunde, XVIII*, 225 ff.

Nennius. *Eulogium Britanniae sive Historia Britonum* in *Monumenta Historica Britannica.* Another edition by Stevenson for the English historical society, 1838; German edition by San-Marte (A. Schulz), Berlin, 1844. On this work see Heinrich Zimmer, *Nennius Vindicatus, über Entstehung, Geschichte und Quellen der Historia Brittonum*, Berlin, 1893, by whom the subject of the personality of the writer and the authenticity of the *Historia Brittonum* has been exhaustively discussed. According to him the original work, *Volumen Brittaniæ*, based on Gildas and later continuations, was written in 796 by Nennius, who lived in South Wales. As to the later corruptions and additions, *cf.* p. 275 *l.c.*

Nicholaus Trevet. *Annales sex Regum Angliae, qui a comitibus Andegavensibus originem traxerunt*, 1136–1307. Edited by Hog for the English historical society, 1845. The author was the son of Thomas Trevet, one of the itinerant justices in 1272; he entered the Dominican order and died after 1330, probably not much later.

Ordericus Vitalis. *Historiae Ecclesiasticae libri tredecim.* Edited by Augustus le Prevost for the *Société de l'histoire de France.* 5 vols. Paris, 1838–55. The writer was born in England, 1075; from 1085 onwards he lived as a monk in Normandy. His history, in which English affairs are fully treated, covers the time from the birth of Christ to 1141. He wrote his book *circ.* 1123–41; whether he lived long after the latter year is not known. See more in Introduction to vol. V of the edition cited.

Unknown author. *De Inventione Sanctae Crucis nostrae in Monte Acuto et de ductione ejusdem apud Waltham.* Edited by Stubbs, Oxford and London, 1861. Relates to the foundation of Waltham abbey, 1059–60. The author was probably born in 1119, and was canon at Waltham till 1177.

Walterus de Hemingburgh (called also Hemingford or Gisseburn). *Chronicon de Gestis Regum Angliae.* Edited by Hamilton for the English historical society. 1848, 49. The chronicle covers the years 1048–1315 and 1327–46. The author was sub-prior of Gisburn. (*Rer. Brit. Scr.* No. 61 p. 160); he died after 1st Nov. 1302, but how long after is not known. The part of the chronicle after 1307 is not by him; perhaps also not the part from 1297–1307. Yet the history of the three Edwards seems to be by contemporaneous writers.

2. Law-books and legal treatises from the beginning of the 12th to the beginning of the 14th century.

Instituta Cnuti aliorumque regum Anglorum. Printed complete (with a *Proœmium* and conclusion belonging not to this work, but to the *Consiliatio Cnuti*) under the title *Legum Regis Canuti Magni . . . versio antiqua latina ex Codice Colbertino* by Kolderup-Rosenvinge, Kopenhagen, 1826. Consists of three parts; the first two are chiefly a translation of the ecclesiastical and secular laws of Knut with slight alterations; the third is a

freer compilation of translations and extracts from various Anglo-Saxon enactments and legal documents with some remarks by the author himself. The third part (with the concluding lines not belonging here) is printed in Schmid, *Gesetze der Angelsachsen*, append. XX, under the title *Pseudo-leges Canuti*. On this law-book cf. Felix Liebermann, *On the Instituta Cnuti aliorumque regum Anglorum* in *Transactions of the Royal Historical Society*, new series VII, 77, London, 1893. The book was certainly written before 1140 (that being the date of the oldest MS), probably (Liebermann, pp. 83, 93) about 1110, because there is allusion in it to the ordinance of Henry I touching hundred moots (cf. § 60, note 4).

Quadripartitus. Only the introductions and books I and II are known; whether books III and IV, which were intended to be written, as we gather from the scheme indicated in the preface, were really written has not been ascertained. The part preserved has been edited by Liebermann, Halle a. S., 1892; where see more about the book. Bk. I contains a translation of most of the still extant Anglo-Saxon laws and legal treatises. [Liebermann generally gives only the headings, referring to Schmid *l.c.*, who prints the text as *Vetus versio*.] Book II contains a collection of documents of the years 1100–1109/11, partly with connecting text. According to Liebermann, *l.c.* pp. 39 ff., the various passages were prepared for several years down to 1114, the preface to bk. II between 1114 and 1118; correction in matters of detail could have been made by the author down to *circ.* 1150; the writer was probably an ecclesiastic at the king's court.

Consiliatio Cnuti. Edited by Liebermann, Halle a. S., 1893. Consists of a short introduction, of a translation of the laws of Knut and of three short Anglo-Saxon treatises. The translation contains small changes and additions. The work was, according to Liebermann, written between 1102 and 1163, very probably before 1150.

Cnuti Constitutiones de Foresta. Printed in Schmid, *Gesetze der Angelsachsen*, as *Knut III*. The treatise professes to be a law of Knut, but is in reality of the twelfth century; the *Instituta Cnuti* are used. Liebermann in *Zeitschrift der Savigny-Stiftung*, German. Abteilung XV, 174; cf. Schmid, *l.c.* p. lvi.

Leges Edwardi Confessoris. Printed in Schmid, *Gesetze der Angelsachsen*, append. XXII, not, however, according to the oldest MSS. The time of composition is unknown; probably, the first third of the twelfth century. William II is mentioned as if no longer reigning. According to Liebermann, Introduction to *Dialogus de Scaccario*, pp. 71 ff., written in the reign of Henry I. Phillips, relying on a remark in the chronicle of Hoveden, supposes that Glanvilla was the author; this view is rejected by Schmid and Liebermann; cf. also Stubbs, *Rer. Brit. Scr.* No. 51 vol. II p. xlix. A revision of the book was made before 1154, probably after 1139; the version in Hoveden rests on this revision (Liebermann, *Über die Leges Angl. saec. XIII ineunte Londoniis collectae*, pp. 28 ff.; cf. also Liebermann, *Zu den Gesetzen der Angelsachsen*, in the *Zeitschr. der Savigny-Stiftung*, Germanic section, V, 224; Stubbs, *l.c.* pp. xliii ff.).— William I and Henry I referred to the *leges Edwardi* as amended by William I as to valid law. William I, Laws III, 13 (in the better text in Hoveden II, 217, c 17), *Carta Henrici I* in *Statutes of the Realm*. I Charters, p. 2.

Leges Regis Henrici Primi. In Schmid, *l.c.* append. XXI. The first two chapters are charters of Henry I. The preface, which refers to these two chapters, must have been written before 1118, as Mathilda, Henry's consort, is mentioned as living; from c 3 onward the *leges* are a private work. It has been disputed when the latter part was written; but as the legislative reforms of Henry II are not noticed, we gather that the law-book is not later than the first years of his reign. According to Liebermann, *Die Abfassungszeit der leges Henrici I*, in *Forschungen zur Deutschen Geschichte* XVI, 582, there is no reason to suppose that the part from c 3 onward was written later than the preface. Cf., however, the authorities

he cites for a contrary opinion. As in c 7 § 1 the ordinance of Henry I touching hundred-moots (cf. § 60, note 4) is referred to as lately (*nuper*) issued, the *leges* are, at any rate, not older than *circ.* 1110. According to Schmid *l.c.* Introduction p. lxx the *Vetus versio* (cf. above, *Quadripartitus*) was used As to the title, whether it is original and whether it belongs to the whole law-book or only to the introductory charter (of 1100), these are questions not yet satisfactorily answered.—Stephen in his shorter charter (*Statutes of the Realm*, I Charters p. 4) confirmed the laws of Henry I and the *leges Edwardi*, i.e. the law as it was in the time of Edward. Henry II referred to the law as under Henry I as valid law. Cf. § 4, note 40. In the *leges Henrici I* the reference is to the *leges Edwardi*. Cf. § 60, note 24.

Dialogus de Scaccario. Printed in Madox, History of the Exchequer and in Stubbs, *Select Charters*. Written in the reign of Henry II—according to the preface, in 1177—by Richard, king's treasurer from *circ.* 1159 to 1198, from 1189 onwards bishop of London. Cf. Liebermann, *Einleitung in den Dialogus de Scaccario*, Göttingen, 1875. According to Stubbs, *Rer. Brit. Scr.* No. 49, vol. I p. lx the *Dialogus* was probably written between 1181 and 1188. Liebermann, on the other hand, supposes that the date of composition was 1178–9.

Radulphus de Glanvilla. *Tractatus de Legibus et Consuetudinibus Regni Angliae.* Edited by John Rayner, London, 1780. Also printed as an appendix by Georg Phillips, *Engl. Reichs- und Rechtsgeschichte*, Berlin, 1827. An edition is in preparation for the *Rer. Brit. Scr.* series. Glanvilla was chief justiciar of England, 1180–90. It is disputed whether he wrote the treatise himself, or whether it was only written during his tenure of office and by another. (For the latter view see especially F. W. Maitland in *Dict. of Nat. biography* under Glanville.) The date of composition is not precisely known; the assize of Northampton (1176) is, however, noticed. According to Liebermann, *Einleitung in den Dialogus de Sc.* p. 74, the completion of the work falls between November 1187 and July 1189.

London collection of legal documents. Carefully described and some small parts printed by Liebermann, *Über die Leges Anglorum saeculo XIII ineunte Londoniis collectae.* Halle a. S., 1894. The collection contains some introductory explanations of words and statements of the number of counties and hides in England (both explanations and statements based on older compositions); further, an edition of the *Quadripartitus* and of a revision of the laws of William I and of the *Leges Edwardi Confessoris*; lastly, legal *monumenta* from the time of the first Norman kings (included are the *leges Henrici I*) down to 1197, also documents to *Magna Carta* of 1215 inclusive, probably added afterwards by the same writer; all this interspersed with other matter; the documents are in many places intentionally corrupted. The author is unknown; according to Liebermann, *l.c.* p. 91, the work was written after 1206, probably all except the later addition mentioned, before 1215; this addition probably *circ.* 1217, perhaps, however, not until after 1244.—Cf. the collections (related to this) from a later time in *Rer. Brit. Scr.* No. 12.

Henricus de Bracton (= Bratton). *De Legibus et Consuetudinibus Angliae.* Edited by Twiss in *Rer. Brit. Scr.* No. 70. 6 vols. In this edition, as not all the MSS have been regarded, several passages have been admitted into the text which are apparently later additions. On the work of Bracton cf. Karl Güterbock, *Henricus de Bracton und sein Verhältnis zum Römischen Rechte*, Berlin, 1862; English translation of the last named work by Brinton Coxe, Philadelphia, 1866, with some additions of his own; F. W. Maitland, *Bracton's Note-Book* (*i.e.* a collection of notes of cases, probably made at Bracton's suggestion, at all events largely used by him for his work. Vols. II and III contain the text; vol. I, the introduction, index etc.), London, 1887, 3 vols. Bracton was justiciar under Henry III. The date of his birth is unknown. He died probably in 1268 (Twiss, vol. II, p. xii). In no part of his work are the alterations in the provisions of

law made in 1258 and 1259 noticed. In one passage there is an allusion to the possible election of Richard of Cornwall to the imperial throne (negotiations in 1256–7). Thus the work was probably completed in 1257. Twiss supposes that the several *tractatus* of which it is made up grew by degrees, the oldest being before the resignation of judicial office by Pateshull (1232; so Twiss, vol. I p. xiv; but the year given is due to a mistake in the dating [16 instead of 11 *Hen. III*=1226–27] in some MSS; Pateshull died in 1229. Maitland I, 45, note 3); for particulars as to the times when the various *tractatus* were written see Twiss, Introduction to the several volumes. According to Maitland, I, 37–44, Bracton used preferentially decisions before 1240, but wrote the book as a whole probably *circ.* 1250–7.

Revision of Glanvilla's law-book. Written or only transcribed by Robert Carpenter of Hareslade, who laboured in 1265, but also long after 1272. See Maitland, *Glanvill revised*, in *Harvard Law Review*, 1892, and Introduction, p. 6, to *The Court Baron* (Selden society, 1891).

Les Encoupemenz [=*inculpamenta*] *en Court de Baron.* Printed by Maitland, *The Court Baron*, pp. 19 ff. Date of composition not precisely known. Consisting of three parts, of which a portion of the second part and the third part are probably later additions; the apparently older part was transcribed by Robert Carpenter of Hareslade.

Brevia Placitata. Unprinted; probably written in the years before 1272; described by Maitland, *The Court Baron*, Introduction p. 11.

Treatise probably by John of Oxford. Consisting of four parts, of which there belong here: 1. Collection of formularies (unprinted; probably completed shortly after 1280; extract given by Maitland in *The Law Quarterly Review*, 1891, pp. 63 ff.); 3. *De Placitis et Curiis tenendis* (probably written shortly after 1269); printed by Maitland, *The Court Baron*, pp. 68 ff.).

Officium Justiciariorum (probably written soon after 1280) and two other treatises. All unprinted; described by Maitland, *The Court Baron*, Introduction pp. 15 ff.

Fleta, seu Commentarius Juris Anglicani (called *Fleta*, because written in the prison of that name). The author is unknown. The treatise is apparently to be assigned about to the year 1290. Latest edition in Houard, *Traités sur les Contumes Anglo-Normandes, publiés en Angleterre depuis le onzième jusqu' au, quatorzième Siècle.* Rouen, 1776. Vol. III.

Britton, *The French Text . . . with an English translation, Introduction and Notes*, by Francis Morgan Nichols. 2 vols. Oxford, 1865. In its present form (which is probably the original one) it belongs to the time between 18 and 23 *Ed. I*, probably 1291–2. Professes to be a codification of existing law, published by king Edward I. Probably the king did cause such a treatise to be written, but this work was not set forth by public authority. The authorship is disputed. Perhaps the name Britton is identical with Bracton. Bracton and *Fleta* are both used.

Radulphus de Hengham. *Summa Magna* and *Summa Parva* (edited, as an appendix to Fortescue, *De Laudibus Legum Angliae*, by Selden. London, 1616). The author was Chief Justice of the King's Bench, 1274–90, Chief Justice of the Common Pleas, 1301–9. He died about 1308–11 (Hardy, *Rer. Brit. Scr.* No. 26, III, 346). When he wrote the treatises is not precisely known. According to Twiss, Bracton, vol. VI pp. lix, lxi, the *Summa Magna* was written after 54 *Hen. III* (1270), the *Summa Parva* after 18 *Ed. I* (1289–90).

Mirrour aux Justices, in five chapters. Printed at London, 1642. The first four chapters are in Houard, *Traités* etc. IV, 463 ff. A new edition by T. W. Whitaker for the Selden society is in preparation. According to Houard *l.c.* the first four chapters are by Andrew Horne, who—Coke, *Reports*, Ed. 1826, pt. X, p. xxv, 'as it is supposed'—wrote at the end of the thirteenth century; whilst the fifth, which mentions usages which originated under Edward II, was added by some unknown writer after Horne's death. But Horne died in 1328. On this Andrew Horne see Riley in *Rer. Brit. Scr.* No. 12, vol. II p. ix, and Stubbs, *Rer. Brit. Scr.* No. 76, vol. I p.

xxiii. According to Twiss, Bracton, vol. III p. xiv, the *Mirrour aux Justices* was written at the earliest in Britton's day, probably later.

Modus tenendi curias (probably composed for John of Longueville), printed by Maitland, *The Court Baron* pp. 79 ff. Written in or shortly after 1307. [Another *Modus tenendi curias*, composed for the abbey of St. Albans, written or revised about 1342, is printed *l.c.* 93 ff.]

Regiam Majestatem, mainly identical with Glanvilla, but in different order and with some alterations and additions, of which a part are old Scottish laws. The author is unknown. The book professes to have been issued upon the mandate of David (I) of Scotland (1124–53), but is in reality, at earliest, of the beginning of the 14th cent. Printed as appendix I to *Acts of the Parliament of Scotland* (edit. of Record Commission), I, 597 ff.; in I, 135, *Regiam Majestatem* and Glanvilla are printed side by side for purpose of comparison.

3. Modern works on church history.

(*a*) Referring to both ancient and modern periods.

Baxter, J. A. *The Church History of England from the Introduction of Christianity into Britain to the Present Time.* 2nd Ed. London, 1849 (first Ed., London, 1846).

Collier, Jeremy. *An Ecclesiastical History of Great Britain, chiefly of England, from the first planting of Christianity, to the end of the Reign of King Charles II; with a brief account of the Affairs of Religion in Ireland.* 1708 ff. New Ed., London, 1852, by Lathbury, 9 vols. (The last volume contains a collection of documents.)

Dodd (= H. Tootell). *The Church History of England from* 1500 *to* 1688, *chiefly with regard to Catholicks; . . . to which is prefixed a general history of ecclesiastical affairs under the British, Saxon and Norman Periods.* 3 vols. Brüssel, 1737.

Foxe, John. *Commentarii Rerum in Ecclesia gestarum, maximarumque, per totam Europam, persecutionum a Wiclevi temporibus ad hanc usque aetatem descriptio.* Strassburg, 1554. A later Latin edition: Basel, 1559. The first English: London, 1563, with the title *Actes and Monumentes of these latter and perilous dayes, touching matters of the Church . . .* (Contains in particular a history of religious persecutions from 64 to 1558, with special reference to England.) New edition in 8 vols. London, 1843–49.

Fuller, Thos. *The Church History of Britain; from the Birth of Jesus Christ untill* 1648. London, 1655. New edition in 6 vols. by Brewer. Oxford, 1845.

Jennings, Arthur Charles. *Ecclesia Anglicana, A History of the Church of Christ in England from the earliest to the present times.* London, 1882. 1 vol.

Inett, John. *Origines Anglicanae, or, A History of the English Church from the conversion of the English Saxons till the death of King John.* 1704 ff. New Ed. in 2 vols. by John Griffiths, Oxford, 1855.

Parker, Matthew, archbishop of Canterbury. *De Antiquitate Britannicae Ecclesiae et Privilegiis Ecclesiae Cantuariensis, cum Archiepiscopis eiusdem* 70. London (Lambeth), 1572 (probably only 25 copies issued). 2nd Ed. Hanoviae, 1605. (Covers the time from the introduction of Christianity to 1558.)

Perry, G. G. *A History of the English Church* (from the first planting of Christianity to the present day). References are to the following editions: vol. I, 4th Ed., 1888; vol. II, 5th Ed., 1888; vol. III, 1st Ed., 1887 (an older book by the same author, covering the period 1603–1800, bears the title *The History of the Church of England from the death of Elizabeth to the present time.* 3 vols. London, 1861–64).

Stäudlin, Carl Friedrich. *Allgemeine Kirchengeschichte von Grossbritannien,* Göttingen, 1819.

(*b*) Roman, British, and Anglo-Saxon periods.

Bright, William. *Chapters of Early English Church History.* 2nd Ed., Oxford, 1888 (from the introduction of Christianity in Roman times to the death of Wilfrid, *circ.* 709).

Lingard, John. *The History and Antiquities of the Anglo-Saxon Church.* London, 1845. 2 vols. (this is the edition to which reference has been made). Reprinted London, 1858.

Lloyd, William. *An Historical Account of Church Government as it was in Great Britain and Ireland when they first received the Christian Religion.* London, 1684. Republished in 1842 along with Stillingfleet's *Origines.*

Loofs, Friedrich. *Antiquae Britonum Scotorumque Ecclesiae quales fuerint mores, quae ratio credendi et vivendi, quae controversiae cum Romana Ecclesia causa atque vis quaesivit F. L.* Leipzig and London, 1882.

Schrödl, Karl. *Das erste Jahrhundert der englischen Kirche, oder Einführung und Befestigung des Christentumes bei den Angelsachsen in Britannien.* Passau and Wien, 1840.

Soames, Henry. *The Anglo-Saxon Church; its History, Revenues and General Character.* 3rd Ed., London, 1844.—The same. *The Latin Church during Anglo-Saxon Times.* London, 1848. (History of papacy in A.-S. times, particularly of its progress in England.)

Stillingfleet, Edward. *Origines Britannicae or The Antiquities of the British Churches.* London, 1685. New edition in 2 vols., Oxford, 1842. (History of British churches to end of 6th cent.)

Usher (Usserius), James. *Britannicarum Ecclesiarum Antiquitates* (also with title *De Britannicarum Ecclesiarum Primordiis*). Dublin, 1639. 2nd Ed. London, 1687. (History of ancient Keltic churches in England, Scotland and Ireland.)

(*c*) Reformation and modern times.

Amos, Andrew. *Observations on the Statutes of the Reformation Parliament in the Reign of King Henry the Eighth.* London and Cambridge, 1859.

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XV. Chronological table of the kings of England from the Norman Conquest to the present day.[a]

Norman kings, 1066–1154.

William I	25th Dec. 1066 (coronation;[1] Harold fell, 14th Oct.)–9th Sep. 1087.
William II	26th Sep. 1087 (coronation)–2nd Aug. 1100.
Henry I	5th Aug. 1100 (coronation)–1st Dec. 1135.
Stephen	26th Dec. 1135 (coronation)–25th Oct. 1154.

House of Anjou (Plantagenets, direct line), 1154–1399.

Henry II	19th Dec. 1154 (coronation)–6th July, 1189.
Richard I	3rd Sep. 1189 (coronation)–6th Ap. 1199.
John	27th May, 1199 (reign reckoned from the coronation on Ascension day)–19th Oct. 1216.[2]

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[1] In the first centuries after the Norman conquest the right to the crown was based not on inheritance alone, but also on election by the magnates of the land. Cf. Stubbs, *Const. Hist.* I, 366 ff. c 11 § 118. Thus on the death of each sovereign there was an interregnum. Until Edward I the reign began with the coronation which succeeded election.

[2] The years of John's reign are reckoned from Ascension day to Ascension day. Thus 1 *Joh.* begins on 27th May, 1199; 2 *Joh.* on 18th May, 1200; 3 *Joh.*

[a] The dates to Charles II are from Hardy's *Syllabus to Rymer*.—Hardy also gives a table of contemporary sovereigns from the reign of William I to Cromwell inclusive.—In Perry, *Hist. of English Church* I, 539 and II, 587, there is a chronological view of the English kings, the archbishops of Canterbury and the popes.

Henry III	28th Oct. 1216 (coronation)–16th Nov. 1272.[3]
Edward I	20th Nov. 1272[4] (day of father's funeral[5])–7th July, 1307.
Edward II	8th July, 1307 (recognition?[6])–20th Jan. 1327 (abdication; died 21st Sept. 1327[7]).
Edward III	25th Jan. 1327 (his reign is reckoned from the day after his Peace was proclaimed[8])–21st June, 1377.
Richard II	22nd June, 1377–29th Sept. 1399 (day of abdication; when he died is not known).

House of Lancaster (branch line of Plantagenets), 1399–1461 (and 1470–1).

Henry IV	30th Sep. 1399 (recognition by parliament)–20th March, 1413.
Henry V	21st March, 1413–31st Aug. 1422.
Henry VI	1st Sept. 1422–4th March, 1461 (proclamation of Edward IV).[9]

House of York (branch line of Plantagenets), 1461–85 (interval, 1470–1471).

Edward IV	4th March, 1461 (proclamation[10])–9th Oct. 1470.[11]
Henry VI	9th Oct. 1470 (first measures in his name[12])–April, 1471.[13]
Edward IV	April, 1471[14]–9th April, 1483.
Edward V	9th April, 1483–25th June, 1483.[15]
Richard III	26th June, 1483 (day on which he declared himself king)–22nd Aug. 1485.

House of Tudor, 1485–1603.

Henry VII	22nd Aug. 1485–21st Ap. 1509.
Henry VIII	22nd Ap. 1509–28th Jan. 1547.
Edward VI	28th Jan. 1547–6th July, 1553.

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on 3rd May, 1201; 4 *Joh.* 23rd May, 1202; 5 *Joh.* 15th May, 1203; 6 *Joh.* 3rd June, 1204; 7 *Joh.* 19th May, 1205; 8 *Joh.* 11th May, 1206; 9 *Joh.* 31st May, 1207; 10 *Joh.* 15th May, 1208; 11 *Joh.* 7th May, 1209; 12 *Joh.* 27th May, 1210; 13 *Joh.* 12th May, 1211; 14 *Joh.* 3rd May, 1212; 15 *Joh.* 23rd May, 1213; 16 *Joh.* 8th May, 1214; 17 *Joh.* 28th May, 1215; 18 *Joh.* 19th May, 1216.

[3] Cf. also John de Oxenedes (*Rer. Brit. Scr.* No. 13) p. 163, on a change—made in 1234—in the mode of calculating the years of Henry's reign.

[4] Hardy *l.c.* reckons the 20th Nov. in both years *e.g.* in 1281 and 1285.

[5] Stubbs, *Const. Hist.* II, 106 c 14 § 179. According to Hardy *l.c.* the 20th Nov., the day of the king's proclamation, is reckoned as the beginning of his reign. Edward himself issued a proclamation apparently on the 23rd Nov.; the magnates had done so on 17th Nov. (Rymer, *Foedera* 4th Ed. I, 497).

[6] Cf. Stubbs, *Const. Hist.* II, 329 c 16 § 249.

[7] For a false report of Edward's escape to the continent see Stubbs in *Chronicles of Edward I and II* (*Rer. Brit. Scr.* No. 76) II p. ciii.

[8] The proclaiming was repeated on the day of the coronation, 29th Jan. 1327. Cf. Stubbs, *Const. Hist.* II, 386 c 16 § 256.

[9] 1st Sept. 1460 to 4th March, 1461 is reckoned as 39 *Hen. VI.*

[10] According to Stubbs, *Const. Hist.* II, 107 c 14 § 179 and III, 195 c 18 § 355 the theory was now first recognized that the new reign began immediately on the termination of the old.

[11] 4th March to 9th Oct. 1470 is reckoned as 10 *Ed. IV.*

[12] Edward IV fled on 3rd Oct. Henry VI was released from the tower 5th Oct. Stubbs, *Const. Hist.* III, 214 c 18 § 358.

[13] Edward IV landed in England on 14th March, and at first acknowledged Henry VI as king. Shortly afterwards he proclaimed himself; on 11th Ap. he entered London where Henry was. On 14th Ap. and 4th May he defeated the Lancastrians; on 21st May Henry died, probably murdered. Stubbs, *Const. Hist.* III, 216 c 18 § 358. The second period of Henry's rule is called 49 *Hen. VI.*

[14] Ap. 1471–3rd March, 1472 is reckoned as 11 *Ed. IV.*

[15] When he died, apparently murdered by Richard's orders, is not known. Stubbs, *Const. Hist.* III, 231 c 18 § 360.

Mary	6th July, 1553–17th Nov. 1558.[16]
Elizabeth	17th Nov. 1558–24th March, 1603.

House of Stuart, 1603–1714 (interval, 1649–60).

James I	24th March, 1603–27th March, 1625.
Charles I	27th March, 1625–30th Jan. 1649.
Commonwealth and protectorate	30th Jan. 1649[17]–8th May, 1660.
Charles II	8th May, 1660[18] (recognition by English Parliament)–6th Feb. 1685.
James II	6th Feb. 1685–28th Jan. 1689 (day of resolution by parliament that the king had vacated the throne by flight. James died 16th Sept. 1701).
William III and Mary	13th Feb. 1689 (acceptance of the crown offered by parliament)–28th Dec. 1694 (death of Mary).
William III	28th Dec. 1694[19]–8th March, 1702.
Anne	8th March, 1702–1st Aug. 1714.

House of Hanover, 1714 to present day.

George I	1st Aug. 1714–12th June, 1727.
George II	12th June, 1727–25th Oct. 1760.
George III	25th Oct. 1760–29th Jan. 1820.
George IV	29th Jan. 1820–26th June, 1830.
William IV	26th June, 1830–20th June, 1837.
Victoria	20th June, 1837–

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[16] 6th July, 1554–24th July. 1554 is reckoned as 2 *Mar.*: 25th July, 1554–5th July, 1555 as 1 & 2 *Phil. & Mar.*; 6th July, 1555–24th July, 1555 as 1 & 3 *Phil. & Mar.*; 25th July, 1555–5th July, 1556 as 2 & 3 *Phil. & Mar.*; 6th July, 1556–24th July, 1556 as 2 & 4 *Phil. & Mar.*; 25th July, 1556–5th July, 1557 as 3 & 4 *Phil. & Mar.*; 6th July, 1557–24th July, 1557 as 3 & 5 *Phil. & Mar.*; 25th July, 1557–5th July, 1558 as 4 & 5 *Phil. & Mar.*; 6th July, 1558–24th July, 1558 as 4 & 6 *Phil. & Mar.*; 25th July, 1558–17th Nov. 1558 as 5 & 6 *Phil. & Mar.*

[17] Cf. § 7, notes 52, 53.

[18] The reign of Charles II is counted as beginning on 30th Jan. 1649.

[19] The years of William's reign were counted regularly on, without regard to Mary's death.

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